

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION

Civ. No. B 025920
(Super. Ct. No. C420153)

5-6-91

CHURCH OF SCIENTOLOGY OF CALIFORNIA,

Appellant-Petitioner,

-against-

GERALD ARMSTRONG,

Defendant.

BENT CORYDON,

Respondent.

Petition From Superior Court of California
County of Los Angeles
Judge Bruce R. Geernaert

PETITION FOR WRIT OF SUPERSEDEAS
OR OTHER APPROPRIATE STAY ORDER
MEMORANDUM OF LAW
STAY REQUESTED

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IN THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION

CHURCH OF SCIENTOLOGY OF CALIFORNIA,	)	Appeal No. _____
Appellant-Petitioner,	)	(Sup. Ct. No.
-against-	)	C420153)
GERALD ARMSTRONG,	)	PETITION FOR WRIT OF
Defendant.	)	SUPERSEDEAS (Stay
BENT CORYDON,	)	Pending Appeal;
Respondent.	)	Temporary Stay Pending
	)	Disposition of
	)	Petition; and, If
	)	Necessary, Temporary
	)	Stay Pending Petition
	)	to Supreme Court)
)	

TO THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE
JUSTICES OF THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA, SECOND APPELLATE DISTRICT:

Pursuant to Section 923 of the California Code of Civil Procedure and Rule 49 of the California Rules of Court, appellant-petitioner Church of Scientology of California seeks a Writ of Supersedeas, staying the order (Exhibit A) of Judge Bruce Geernaert of the Superior Court (Los Angeles County), which granted access to respondent Bent Corydon to a certain exhibit number 500-CCCCC of the judicial records of this case, previously sealed by the trial court, Judge Paul Breckenridge, on the grounds of attorney-client privilege. Judge Geernaert stayed his order for a period of 21 days to give petitioner an opportunity to seek a stay from this Court. The stay is sought pending this Court's disposition of the Church's appeal

from the order of Judge Geernaert granting such access to Corydon. The Church's Notice of Appeal was filed on April 26, 1991 (Exhibit B).

The background for this application and the grounds upon which it is based are set forth in the accompanying Memorandum of Law.

WHEREFORE, plaintiff-petitioner requests that this Court issue a writ of supersedeas staying the Superior Court's disclosure order pending this Court's decision on petitioner's appeal of the Superior Court's order, and any subsequent appeals, if necessary. Plaintiff-petitioner also requests a temporary stay pending disposition of this petition, if this court does not reach a disposition of this petition before May 7, 1991, the date the trial court's stay terminates.

Plaintiff-petitioner further requests a temporary stay pending application for a writ of supersedeas to the Supreme Court, in the event that this Court denies this petition for writ of supersedeas.

Dated: April 29, 1991

Respectfully submitted,



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MEMORANDUM OF LAW

INTRODUCTION

This petition seeks a stay pending appeal of an order of Superior Court Judge Bruce Geernaert granting Bent Corydon, a non-party to the underlying action below, access to two audiotapes, denominated Ex. 500-CCCCC,^{1/} for his use, subject to a protective order, in another lawsuit he has brought in the Superior Court.^{2/} The tapes are presently maintained under seal in the offices of the clerk of the Superior Court. Judge Geernaert stayed his order for 21 days, until May 7, 1991, to give the Church an opportunity to obtain a stay from this Court, pending the Church's plenary appeal from the disclosure order.

The tapes had previously been ruled privileged on several occasions by Superior Court Judge Paul Breckenridge (now retired), once on a fully litigated motion for access by the United States Department of Justice, which asserted that the tapes were not privileged under the crime-fraud exception. Judge Geernaert overruled Judge Breckenridge's earlier ruling, not on the basis of an independent review of the issue, but on the highly questionable ground that the Church was collaterally estopped from asserting the privilege because of a recent independent ruling by the United States Court of

1. The tapes were not introduced into evidence in the trial of the underlying action below on the grounds that they were protected by the attorney-client privilege.

2. That lawsuit, Corydon v. Church of Scientology International, Case No. C 694401 (L.A. Cty.), is scheduled to go to trial on May 20, 1991.

Appeals for the Ninth Circuit that the tapes are not privileged. United States v. Zolin, 905 F.2d 1344 (9th Cir. 1990). It is the Church's position that Judge Geernaert committed clear error in applying the doctrine of collateral estoppel on the basis of the Ninth Circuit ruling which, apart from not being a final determination, is inconsistent with the prior holding of Judge Breckenridge and of at least one other court. As we show below, the doctrine of collateral estoppel does not apply in such circumstances.

A stay pending appeal from Judge Geernaert's order is warranted because: (1) petitioner will by definition suffer irreparable harm -- and will irretrievably lose the rights at stake in this appeal -- in the absence of a stay; and (2) petitioner will raise substantial questions of law regarding the propriety of the court's disclosure order.

FACTUAL AND PROCEDURAL HISTORY

1. The underlying lawsuit below was brought in 1982 by the Church to recover private documents converted by defendant Gerald Armstrong ("Armstrong"). Shortly after the initiation of the lawsuit, Superior Court Judge Cole issued a temporary restraining order and then a preliminary injunction requiring Armstrong to submit the documents he had taken to the clerk of the court under seal. Exhibit C.^{3/} Among the documents surrendered was exhibit 500-CCCCC, which consists of two audio tapes of attorney-client meetings conducted in 1980, and five other exhibits (hereinafter "the five

3. The exhibits referred to in this memorandum were submitted to the Superior Court and are attached to this petition.

exhibits").^{4/} The tapes and "the five exhibits" have been held by the clerk of the Supreme Court under seal since they were delivered to the court by Armstrong pursuant to Judge Cole's order.

2. When the underlying case went to trial on the Church's claims before Judge Breckenridge in May 1984, Armstrong attempted to introduce the tapes into evidence, claiming they came within the crime-fraud exception to the attorney-client privilege. Judge Breckenridge refused to admit them into evidence, finding that they presumptively were protected by the privilege. Exhibit D. At the conclusion of the trial, Judge Breckenridge maintained the seal on the tapes and on all other documents which had been surrendered to the clerk and which were not admitted into evidence. Neither the tapes nor "the five exhibits" were admitted into evidence. Exhibit E, at p. 2 and fn. 1.

3. On February 25, 1984, the United States Justice Department served a subpoena on the clerk of this court seeking access to the tapes and several other exhibits, for use in two then-pending civil actions. Judge Breckenridge denied the Justice Department access to the tapes. Exhibit F (court order).

The issue of whether the tapes were protected by the attorney-client privilege was fully and fairly litigated before Judge Breckenridge. The Justice Department argued that the tapes came within the "crime-fraud" exception to the privilege, and submitted a declaration of Gerald Armstrong

4. Exhibits 500-5K, 500-5L, 500-50, 500-5P and 500-60.

which included extensive excerpts of the tapes. (Prior to surrendering the tapes to Judge Cole, Armstrong had listened to the tapes, transcribed what he deemed to be the most "damaging" portions, and included the excerpts in a declaration which he made available to the Justice Department and other litigants who had sued Churches of Scientology. The same Armstrong declaration was later submitted by Corydon in support of his motion below for access to the tapes.) Judge Breckenridge ruled that the Justice Department had failed to show, through the excerpts or any other evidence, that the tapes came within the crime-fraud exception to the privilege. Judge Breckenridge explicitly considered the excerpts in reaching his decision, but refused to go further and listen to the tapes themselves, finding that he was forbidden to do so by California law. See Exhibit G (transcript of proceedings), pp. 51, 75. Judge Breckenridge stated his holding:

It brings us down to a problem of where this attorney-client privilege stands and the role of the attorney, while I suppose it has been denigrated in the public media from time to time it still plays an important role in our society and in the manner in which we deal with the courts and government and so forth. I think that probably on balance that the public policy which favors full and open communication between a client and lawyer has to prevail over the suggestion that there was some secret intent on the part of the person who is communicating with the lawyer.

It would be too easy to set aside the privilege if that were the fact, at least in the absence of very strong evidence to that effect.

So I am going to sustain the privilege solely as to what is on that tape. I don't want anybody suggesting that I have gone any further than that. Just as to what is on that tape is concerned, I am finding that

privileged. I will sustain the objection.

Id. at 75-76.

4. The Justice Department appealed Judge Breckenridge's ruling, but then dismissed the appeal.

5. Meanwhile one of the private civil litigants to whom Armstrong had given his affidavit with the tape excerpts filed the affidavit in a pleading in federal court in New York. The Church moved to strike the declaration because it contained attorney-client privileged material. The United States District Court for the Southern District of New York upheld the privilege and rejected the crime-fraud argument, explicitly holding that there existed "no significant evidence . . . that the restructuring project . . . involved the intended commission of a fraud." Bear v. Church of Scientology of New York, et al., 81 Civ. 4688, 6864 (Dec. 5, 1985). Exhibit H.

6. Independently of the Justice Department's attempt to obtain the tapes from Judge Breckenridge for use in non-tax civil litigation, the Internal Revenue Service began a summons enforcement action in federal district court in Los Angeles to obtain the tapes for purposes of a tax investigation. This was the Zolin case. Like the Justice Department, the IRS argued that the tapes came within the "crime-fraud" exception, relying on the same excerpts contained in the Armstrong declaration^{5/}, which two courts -- including the

5. In Zolin, the government submitted a longer version of the transcript, but relied entirely on the same portions as were transcribed in the Armstrong declaration.

Los Angeles Superior Court in this case -- previously had held to be insufficient to show that the privilege was overcome by the crime-fraud exception. Federal District Judge Harry Hupp likewise rejected the government's showing, finding that, "the quoted excerpts tend to show or admit past fraud but there is no clear indication that future fraud or crime is being planned." Exhibit I.

7. The United States Court of Appeals for the Ninth Circuit affirmed Judge Hupp's order denying the IRS access to the tapes, but on a different ground. United States v. Zolin, 809 F.2d 1411 (9th Cir. 1987). The court held that Judge Hupp should not have considered even the partial transcripts of the tapes set forth in the Armstrong declaration, but rather should have considered only evidence completely independent of the tapes themselves. Finding that the independent evidence did not make out an ongoing crime or fraud, the court affirmed Judge Hupp's order.

8. The Ninth Circuit granted the IRS' petition for review en banc. United States v. Zolin, 832 F.2d 127 (9th Cir. 1987). After oral argument, however, the en banc court dismissed the writ as improvidently granted, and reinstated the panel decision. United States v. Zolin, 842 F.2d 1135 (9th Cir. 1988). Three members of the en banc court dissented, arguing that the panel's strict version of the independent evidence rule was improper, and urging a more flexible approach. Significantly, the en banc dissenters would have affirmed Judge Hupp's order denying the IRS access to the tapes, on the grounds that he acted properly in

finding that the crime-fraud exception had not been made out by the excerpts of the tapes. Id.

9. On certiorari, the Supreme Court rejected both the strict independent evidence rule and the government's position that would have required in camera review of otherwise privileged documents. Rather, the Court articulated the standard under which in camera review of privileged material might be undertaken:

Before engaging in in camera review to determine the applicability of the crime-fraud exception, "the judge should require a showing of a factual basis adequate to support a good faith belief by a reasonable person," Caldwell v. District Court, 644 P.2d 26, 33 (Colo. 1982), that in camera review of the materials may reveal evidence to establish the claim that the crime-fraud exception applies.

Once that showing is made, the decision whether to engage in in camera review rests in the sound discretion of the district court.

Zolin, 109 S.Ct. at 2631. The Court further held that "the threshold showing to obtain in camera review may be met by using any relevant evidence, lawfully obtained, that has not been adjudicated to be privileged." Id. at 2632 (emphasis added). The Court noted that whether the partial transcripts were privileged and whether they were lawfully obtained remained an open question, id. at 2624 n. 5, 2631, and remanded to the court of appeals. Id. at 2632.

10. On remand, the Ninth Circuit panel brushed aside all such questions and held, contrary to the previously expressed holdings or views of Judge Breckenridge of this Court, of the

Southern District of New York in the Bear case, of Judge Hupp and of the three Ninth Circuit dissenters from the en banc order, that the partial transcripts contained in the Armstrong declaration indeed did make out the crime-fraud exception. The Ninth Circuit remanded to Judge Hupp for further proceedings.

11. The Church filed a petition for writ of certiorari to the Supreme Court of the United States on December 18, 1990. The Supreme Court denied the petition on March 18, 1991. 59 L.W. 3636.

12. On October 11, 1988, while the Zolin case was first pending before the Supreme Court, Bent Corydon, a non-party to this case, filed a motion to unseal the file in this case, which was granted on November 9, 1988. Exhibit J. On the Church's motion for reconsideration, the Superior Court (Geernaert, J.) excluded the tapes from its unsealing order on the grounds that they were privileged. Exhibit K (transcript of hearing of November 30, 1988) at 11; Exhibit L (Minute Order, November 30, 1988).

13. The Church appealed Judge Geernaert's unsealing order, and Corydon cross-appealed from Judge Geernaert's order denying him access to the tapes. Appeal No. B 038975 (Division 3), appeal pending. Corydon briefed to this Court his argument that he should be permitted access to the tapes. Before oral argument, however, Corydon sua sponte dismissed his cross-appeal. Exhibit M.^{6/}

6. Oral argument on the Church's appeal was held on February 20, 1991.

14. At the same time that he dismissed his cross-appeal, Corydon filed a new motion before Judge Geernaert seeking access to the tapes, based upon the decision of the Ninth Circuit on Zolin.^{7/} Several hearings were held before Judge Geernaert, at which he stated that he would make an independent determination of the privilege issue, and, if necessary, would review the tapes in camera.

15. Despite these prior statements, on April 16, 1991, Judge Geernaert held that he would grant Corydon's motion on the basis of the doctrine of collateral estoppel, arising out of the Zolin decision. Exhibit A. Judge Geernaert stayed his decision for 21 days to permit this application for a stay pending appeal.

ARGUMENT

INTRODUCTION

The rule is well-established that "the courts will grant supersedeas in appeals where to deny a stay would deprive the appellant of the benefit of a reversal of the judgment against him." People ex rel. San Francisco Bay Conservation and Development Commission v. Town of Emeryville, 69 Cal.App.2d 533, 72 Cal.Rptr. 790, 892 (Ct.App. 1968) en banc (quotation omitted).

Issuance of a writ of supersedeas is proper where: (1) the appellant would otherwise irretrievably lose the right he seeks to vindicate on appeal, while respondent is less likely to be prejudiced by grant of a stay; and (2) the appellant

7. Corydon, of course, could have raised the Zolin decision as supplemental authority in his pending appeal in this court.

raises either "substantial issues" or "difficult questions" of law on appeal. Id. at 793; Davis v. Custom Component Switches, Inc., 13 Cal.App.3d 21, 91 Cal.Rptr. 181, 185 (Ct.App. 1970); Mehr v. Superior Court, 139 Cal.App.3d 1044, 189 Cal.Rptr. 138 (Ct.App. 1983).

I. DENIAL OF A STAY WOULD IRRETRIEVABLY
COMPROMISE PETITIONER'S ASSERTION OF
PRIVILEGE WITH RESPECT TO THE TAPES

The tapes are recordings of attorney-client conferences held over a decade ago with the then-attorneys for the Church and L. Ron Hubbard. Corydon seeks them for use in his pending lawsuit against the Church; the Superior Court has ruled that the tapes are relevant to Corydon's case. Thus it is indisputable that if Corydon is granted access to the tapes, even temporarily, the privacy and integrity of the attorney-client conferences will be irretrievably compromised. Even if Corydon ultimately is not permitted to introduce the tapes into evidence in his case, he will have gained invaluable insights from his access to confidential attorney-client consultations on subjects deemed relevant to his case. Once such access is granted, it will not be possible for this Court to "unring the bell" if it ultimately reverses Judge Geernaert's ruling. Manness v. Myers, 419 U.S. 449, 460 (1975) (holding that disclosure of privileged information necessarily results in irreparable harm; "subsequent appellate vindication does not necessarily have its ordinary consequence of totally repairing the error"). In this case, the damage indisputably will have been done; the privilege will have been improperly destroyed. California

courts, like the United States Supreme Court, have recognized the need to protect private or privileged material pending appeal. See Champion v. Superior Court, 201 Cal.App.3d 777, 247 Cal.Rptr. 624 (Ct. Appeal 1988).

Any hardship to Corydon arising from the fact that his lawsuit is scheduled to commence trial on May 20, 1991 is of his own doing. Corydon originally sought access to the tapes on October 11, 1988; he was denied. He appealed from that ruling, and briefed the issue in this Court. Then, prior to argument, he dismissed the appeal and brought a new motion in the Superior Court. Had Corydon proceeded with his cross-appeal in this Court on the issue of the tapes, an appellate decision would be imminent. Corydon's tactical ploy of dismissing his appeal and bringing a new motion in the Superior Court created whatever exigency now exists in terms of the imminence of the trial date. Corydon should not be permitted to utilize his ploy as a means to deprive petitioner of a stay and of effective appellate review.^{8/}

In any event, Corydon has estimated that trial of his case will take approximately 60 trial days, or 15 weeks. (The Church has estimated that trial could go on considerably longer.) If necessary, the appellate process can be expedited to ensure a final decision well before the conclusion of the trial.

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8. Indeed, if any party is barred by doctrines of judicial estoppel, it is Corydon, who litigated the issue of his access to the tapes against the same party and lost.

II. PETITIONER WILL RAISE SUBSTANTIAL
QUESTIONS ON THE MERITS OF THE
COLLATERAL ESTOPPEL ISSUE, AND IS
LIKELY TO SUCCEED ON ITS APPEAL

It is critical to recognize the context in which the purported collateral estoppel arises in this case. As we have shown, prior to the most recent decision of the Ninth Circuit in Zolin, the petitioner twice has prevailed on the very same issue with respect to the tapes in two different jurisdictions, including in the Superior Court itself in this very case. The prior rulings of the Superior Court on the Justice Department's motion for access to the tapes and of the United States District Court for the Southern District of New York in the Bear case preclude the application of the collateral estoppel doctrine against the Church based upon the independent contrary views of the Ninth Circuit.

The Supreme Court has stated that offensive use of the collateral estoppel doctrine would be unfair "if [as in this case] the judgment relied upon as a basis for the estoppel is itself inconsistent with one or more previous judgments in favor of the defendant." Parklane Hosiery Co. v. Shore, 439 U.S. 322, 330 (1979). The rationale is stated in the Restatement (Second) of Judgments, section 29 comment f:

f. Inconsistent prior determinations.
Giving a prior determination of an issue conclusive effect in subsequent litigations is justified not merely as avoiding further costs of litigations but also by underlying confidence that the result reached is substantially correct. Where a determination relied on as preclusive is itself inconsistent with some other adjudication of the same issue, that confidence is generally unwarranted. The inference, rather, is that

the outcome may have been based on equally reasonable resolutions of doubt as to the probative strength of the evidence or the appropriate application of a legal rule to the evidence. That such doubtful determination has been given effect in the action in which it was reached does not require that it be given effect against the party in litigation against the adversary.

Quoted and followed in Jack Faucett Associates v. American Telephone & Telegraph Co., 744 F.2d 118, 129-30 (D.C. Cir. 1984). Accord, Crawford v. Ragner Insurance Company, 653 F.2d 1248, 1252 (9th Cir. 1981); Brumley Estate v. Iowa Beef Processors, Inc., 704 F.2d 1351, 1355-56 (5th Cir. 1983) ("We see no justification for granting collateral estoppel effect to two judgments and ignoring a third contrary Judgment"); Hardy v. Johns-Manville Sales Corp., 681 F.2d 334, 346 (5th Cir. 1982).

The California courts have followed the Parklane/Restatement rule. In Sandoval v. Superior Court of Kings County, 140 Cal.App.3d 932, 190 Cal.Rptr. 29 (1983), the court reasoned that the principles concerning the effect of inconsistent verdicts on the application of collateral estoppel that underlay Parklane and Hardy (a Fifth Circuit case cited above) "are equally pertinent to the state court actions." 190 Cal.Rptr. at 37. The court concluded that the presence of two inconsistent verdicts foreclosed the court below from giving a preclusive effect to one of the judgments. Id. at 38. See also, Imen v. Glassford, 247 Cal.Rptr. 514 (1988).

There is a second reason why collateral estoppel cannot apply; the decision of the Ninth Circuit in Zolin is not a

final order. The Ninth Circuit remanded the case to the district court to permit the Church to make further "objections" to the release of the tapes. 905 F.2d 1345. On remand, the district court refused to permit any such objections, but stayed release of the tapes for 21 days to permit the Church to seek a stay from the Ninth Circuit pending further appeal. Such an application has been made, and is pending. In any event, the release of the tapes to the IRS will not be final until all appeals are exhausted. Since collateral estoppel can apply only with respect to final judgments, it cannot apply at the present time with respect to the Zolin case.

Thus, at the very least, a substantial question is raised here as to the propriety of Judge Geernaert's ruling, which is predicated exclusively on the doctrine of collateral estoppel. A stay is required to preserve petitioner's right to challenge the clearly questionable ruling.

CONCLUSION

Petitioner has demonstrated that it will be irreparably harmed if the disclosure order is not stayed and that it has

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substantial arguments that the order should be reversed. For these reasons, petitioner should be granted a stay pending appeal.

Dated: April 29, 1991

Respectfully submitted,



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Counsel for Petitioner

VERIFICATION

I, JAMES L. MORROW, declare and say:

I am a director for the appellant-petitioner in this action. All facts alleged in the Petition for Writ of Supersedeas, not otherwise supported by citations to the record, exhibits or other documents are true of my own personal knowledge.

I declare, under penalty of perjury, that the foregoing is true and correct, and that this declaration was executed on April 29, 1991 at Los Angeles, California.



JAMES L. MORROW

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT. 56

DATE 04/16/91

HONORABLE BRUCE R. GEERNAERT

JUDGE

J. SWEET

DEPUTY CLERK _____

HONORABLE

JUDGE PRO TEM

[2]

M. MEDARIS ASST. CLK

CT ATT / Deputy Sheriff

H. CANNON

Reporter / ERM
(Parties and counsel checked if present)

9:00 am

C420153

Church of Scientology of Calif.

vs.

Gerald Armstrong,

Counsel for
Plaintiff

ERIC LIEBERMAN (X)

QUINN, KULLY & MORROW

BY: JOHN J. QUINN (X)

Counsel for
Defendant

TOBY L. PLEVIN (X)

NATURE OF PROCEEDINGS.

MOTION OF THIRD PARTY BENT CORYDON TO EXAMINE AND COPY
EXHIBIT 300 CCCCC;

The motion is granted. The tapes are ordered unsealed
under the same conditions as the previous unsealing
order.

The order is stayed for 21 days from this date.

Moving party to submit within 1 day an attorney order
either approved as to form or accompanied by written
objections.

MINUTES ENTERED

Rejected
Per. note
4
CCD

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23 SUPERIOR COURT OF THE STATE OF CALIFORNIA
24 FOR THE COUNTY OF LOS ANGELES

25 CHURCH OF SCIENTOLOGY OF
26 CALIFORNIA, a California
27 corporation,

28 Plaintiff,

vs.

GERALD ARMSTRONG; DOE 1 through
DOE 10, inclusive,

Defendants.

MARY SUE HUBBARD,

Intervenor.

CASE NO. C 420 153

NOTICE OF APPEAL,
NOTICE OF ELECTION
UNDER CRC RULE 5.1,

AND NOTICE OF PARTIAL
DESIGNATION OF REPORTER'S
TRANSCRIPT

ORIGINAL FILED
COUNTY CLERK

FEE RECEIVED
Ch 4/17/77

1 GERALD ARMSTRONG,)
2 Cross-Complainant,)
3 vs.)
4 CHURCH OF SCIENTOLOGY OF)
CALIFORNIA, et al.,)
5 Cross-Defendants.)
6

7
8 Church of Scientology of California, plaintiff and
9 cross-defendant, and Mary Sue Hubbard, intervenor (hereinafter
10 "appellants"), appeal to the Court of Appeal of the State of
11 California, Second District, from the April 16, 1991
12 post-judgment order of Los Angeles County Superior Court Judge
13 Bruce R. Geernaert (the "Order", Exhibit A). Appellants
14 appeal from that portion of the Order which directs a portion
15 of the Superior Court file in this case to be unsealed.

16 Said Order arises out of a motion of Bent Corydon to
17 unseal Exhibit 500 CCCCC ("Motion to Unseal"). Counsel for the
18 proponent of the motion to unseal is Toby L. Plevin, 10700
19 Santa Monica Boulevard, Suite 4300, Los Angeles, California
20 90025.

21 Pursuant to California Rules of Court, Rule 5.1, notice is
22 hereby given that appellants elect to present the relevant
23 Superior Court record to the Court of Appeal via preparation of
24 appendices rather than through the preparation of a clerk's
25 transcript under California Rules of Court, Rule 5.

26 Pursuant to California Rules of Court, Rule 4(b), notice
27 is hereby given that appellants request the preparation of a
28 partial reporter's transcript which shall include only the

1 following oral proceedings: (a) hearing of December 14, 1990;
2 (b) hearing of January 11, 1991; (c) hearing of April 16, 1991.

3 Dated: April 26, 1991

Respectfully submitted,

4 ERIC M. LIEBERMAN
5 RABINOWITZ, BOUDIN, STANDARD,
6 KRINSKY & LIEBERMAN, P.C.

7 Attorney for Plaintiff
8 and Intervenor

9 JOHN J. QUINN
10 QUINN, KULLY & MORROW

11 By: 

David Eisen

12 Attorneys for Plaintiff
13 and Cross-defendant
14 CHURCH OF SCIENTOLOGY
15 OF CALIFORNIA

16 MICHAEL L. HERTZBERG

17 Attorney for Intervenor
18 Mary Sue Hubbard

19 WILLIAM T. DRESCHER

20 Attorney for Plaintiff
21 and Cross-defendant
22 CHURCH OF SCIENTOLOGY
23 OF CALIFORNIA
24
25
26
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28

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT. 56

DATE 04/16/91

HONORABLE BRUCE R. GEERNAERT

JUDGE J. SWEET

DEPUTY CLERK _____

HONORABLE JUDGE PRO TEM

[2]

M. MEDARIS ASST. CLK CT ATT / Deputy Sheriff

H. CANNON

Reporter / ERM
(Parties and counsel checked if present)

9:00 am C420153
Church of Scientology of Calif.
vs.
Gerald Armstrong,

Counsel for Plaintiff ERIC LIEBERMAN (X)
QUINN, KULLY & MORROW
BY: JOHN J. QUINN (X)
Counsel for Defendant TOBY L. PLEVIN (X)

NATURE OF PROCEEDINGS.

MOTION OF THIRD PARTY BENT CORYDON TO EXAMINE AND COPY
EXHIBIT 300 CCCCC;

The motion is granted. The tapes are ordered unsealed
under the same conditions as the previous unsealing
order.

The order is stayed for 21 days from this date.

Moving party to submit within 1 day an attorney order
either approved as to form or accompanied by written
objections.

MINUTES ENTERED

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Hollywood, California 90028.

On April 26, 1991, I caused to be served the foregoing document described as NOTICE OF APPEAL, NOTICE OF ELECTION UNDER CRC RULE 5.1, AND NOTICE OF PARTIAL DESIGNATION OF REPORTER'S TRANSCRIPT on interested parties in this action as below:

Gerald Armstrong
P.O. Box 751
San Anselmo, CA 94960

Toby L. Plevin
Attorney at Law
10700 Santa Monica Blvd.
Suite 4300
Westwood, CA 90025

If hand service is indicated, I caused the above referenced paper to be served by hand, otherwise I caused such envelopes with postage thereon fully prepaid to be placed in the United States mail at Hollywood, California.

Executed on April 26, 1991, at Hollywood, California.

A handwritten signature in black ink, appearing to read 'Toby L. Plevin', is written over a horizontal line.

EXHIBIT C

1 GREY AND KOHLWECK
2 Attorneys at Law
3 1821 Wilshire Blvd.
4 Suite 210
5 Santa Monica, CA. 90403
6
7 (213) 820-4676
8 Attorneys for Plaintiff
9

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF LOS ANGELES
13

14 CHURCH OF SCIENTOLOGY OF
15 CALIFORNIA, a California
16 corporation,

17 Plaintiff,

18 v.

19 GERALD ARMSTRONG, DOES 1
20 through 10, inclusive,

21 Defendants.
22

23 No. 420 153

24 TEMPORARY RESTRAINING ORDER

25 Sept. 24, 1982
26 D 85
27 9 A.M.
28

29 On reading the verified Complaint of Plaintiff Church of
30 Scientology of California, Inc. on file in the above entitled
31 action, the Application for Temporary Restraining Order, the
32 Memorandum of Points and Authorities and the supporting
33 Declarations submitted therewith, and it appearing to the
34 satisfaction of the Court that this is a proper case for granting
35 a Temporary Restraining Order, and that unless the Temporary
36 Restraining Order prayed for in the Complaint be granted great
37 or irreparable injury will result to Plaintiff before the matter
38 can be heard on notice.

39 //

P2- ing the hearing on the order to remove cause on
for Sept 24, 1982. Def. has stipulated to the order extending
to that date.

COLE

IT IS HEREBY ORDERED that the above-named Defendant, and

his agents, employees, representatives and all persons acting in concert or participating with them, shall be and they are hereby restrained and enjoined from engaging in or performing, directly or indirectly, any and all of the following acts:

Dissemination, duplication, destruction or disclosure of the contents of any material obtained by Gerald D. Armstrong during his tenure as the custodian of records for the Archives Project of the Church of Scientology of California, or obtained by defendant Gerald Armstrong from Omar V. Garrison after Defendant Armstrong left the employ of Plaintiff Church of Scientology of California, including, by way of example only, but not limited to, journals, memoranda, drafts, notes, orders, letters, HCOPL's, any other form of policy or technical directives or bulletins, photographs, audio and video recordings of every kind, artifacts, memorabilia, antique writings and treatises, books, novels and other publications of L. Ron or Mary Sue Hubbard or any other material not above described but being a part of the Archives collection of the Plaintiff Church of Scientology of California.

IT IS FURTHER ORDERED that the above-named Defendant, and his agents, employees, representatives, and all other persons acting in concert or participating with him, especially Defendant Armstrong's attorneys of record, Michael Flynn, Thomas Hoffman, and Thomas Greene of Boston, Massachusetts, and Julia Dragojevic, Bruce Bunch and John R. Contos of Woodland Hills, California, surrender to the

//

1 possession of the Clerk of the Superior Court, for the County of
2 Los Angeles, Central District, within ten (10) days and under
3 seal, only to be viewed by the attorneys of record of the parties
4 limited hereto, all documents and materials provided to them at
5 any time by Defendant Armstrong pertaining to the Church of
6 Scientology as above referenced in the preceding paragraph of
7 this order and especially including:

8 1. All letters to and from L. Ron Hubbard and his wife
9 Mary Sue Hubbard;

10 2. All letters to and from L. Ron Hubbard and his first
11 and second wives;

12 3. All letters to and from L. Ron Hubbard and John
13 W. Parsons;

14 4. All correspondence between L. Ron Hubbard and Don
15 Purcelle;

16 5. All letters and other documents concerning the Hubbard
17 Explorations Company;

18 6. All papers which concern L. Ron Hubbard's activity as a
19 reservist and commissioned officer of the United States Navy;
20 and

21 7. All audio tape recordings which were allegedly provided
22 Defendant Armstrong by one Barbara DeCell concerning meetings;
23 records, and activities of M CCS.

24 ///

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1 IT IS FURTHER ORDERED that copies of the Application for
2 Temporary Restraining Order, supporting papers, declarations
3 submitted herewith and this Temporary Restraining Order be
4 served on Defendant, and each of them, not later than
5 Aug. 24, 1982.

6 DATED: _____

John L. Cole

8 JUDGE OF THE SUPERIOR COURT

9 An undertaking in the amount of \$ 25000 ^{7/8} shall
10 be posted forthwith as a bond.

11 DATED: Aug 24, 1982

John L. Cole

12 JUDGE OF THE SUPERIOR COURT
13
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CONTOS & BUNCH
LAWYERS
5855 TOPANGA CANYON BOULEVARD
SUITE 400
WOODLAND HILLS, CALIFORNIA 91367
(213) 716-8400

FILED

OCT 4 1982

Attorneys for Defendant and Cross-Complainant
GERALD ARMSTRONG

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY OF
CALIFORNIA, a California
corporation,

Plaintiff,

vs.

GERALD ARMSTRONG, DOES 1
through 10, inclusive,

Defendants.

CASE NO: C 420 153

PRELIMINARY INJUNCTION

GERALD ARMSTRONG,

Cross-Complainant,

vs.

CHURCH OF SCIENTOLOGY OF
CALIFORNIA, et al.,

Cross-Defendants.

The Application of Plaintiff CHURCH OF SCIENTOLOGY OF
CALIFORNIA for a Preliminary Injunction came on regularly for
hearing on September 24, 1982 before the Honorable John L. Cole,
pursuant to an Order to Show Cause issued by the Court on

1 August 24, 1982. Plaintiff CHURCH OF SCIENTOLOGY OF CALIFORNIA
2 appeared by counsel, Lawrence E. Heller; Defendant GERALD
3 ARMSTRONG appeared by counsel, Julia Dragojevic.

4 Upon proof made to the satisfaction of the Court, and
5 good cause appearing therefore,

6 IT IS ORDERED that the Application for Preliminary
7 Injunction is granted only to the following extent:

8 That the materials heretofore turned over to the
9 Clerk of this Court by Defendant GERALD ARMSTRONG and/or his
10 agents, employees, representatives and other persons or entities
11 working in or on his behalf, shall be retained in the possession
12 of the Clerk of this Court during the pendency of this action
13 or until further order of the Court;

14 That said materials may be inspected during business
15 hours by counsel for any of the parties herein, either accompanied
16 by or not accompanied by their clients, and with respect to
17 Plaintiff's counsel, by a representative of Plaintiff;

18 That such inspection is for the purpose of preparing for
19 the within litigation, in that the materials inspected may be
20 used only for that purpose. There shall be no dissemination,
21 publication or other use of any of the information contained
22 in said materials except for the purpose of this litigation.
23 For such purpose, said materials are perfectly and freely
24 usable. However, Defendant GERALD ARMSTRONG is not restrained
25 from testifying as to the contents of said materials from his
26 own knowledge;

27 That if there is other litigation in which a Court of
28 competent jurisdiction has declared that said materials are

1 subject to discovery, or relevant for the object of discovery,
2 then upon giving this Court competent evidence of such a
3 determination by another Court, an appropriate order ^{will} be
4 made allowing counsel in the other litigation to similarly
5 inspect and use said materials.

6 ~~As a point of clarification, the Court further stated~~
7 ~~that when another Court involved in any other litigation makes~~
8 ~~a determination that said materials are usable or discoverable~~
9 ~~in other litigation, and evidence of that determination is made~~
10 ~~to this Court, then this Court will allow inspection and use~~
11 ~~of said materials.~~

12 IT IS FURTHER ORDERED that except as indicated, the
13 Application for Preliminary Injunction and Order to Show
14 Cause are denied and discharged.

15 IT IS FURTHER ORDERED that an undertaking in the amount
16 of \$1,000.00, as required by Section 529 of the California
17 Code of Civil Procedure, shall be posted forthwith as bond.

18 DATED: Oct 4, 1932

19 
20 JOHN L. COLE
21 JUDGE OF THE SUPERIOR COURT
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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT NO. 57

HON. PAUL G. BRECKENRIDGE, JR., JUDGE

4
5 CHURCH OF SCIENTOLOGY OF)
6 CALIFORNIA, INC.,)

7 Plaintiff,)

8 vs.)

9 GERALD ARMSTRONG,)

10 Defendant.)

11 MARY SUE HUBBARD,)

12 Intervenor.)
13

No. C 420 153

14 REPORTERS' DAILY TRANSCRIPT

15 VOLUME 26

16 Pages 4548 through 4683, incl.

17
18 APPEARANCES:

19 (See Appearance page.)
20
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27 COPY
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NANCY HARRIS, CSR #644
HERBERT CANNON, CSR #1923
Official Reporters

0/1
(
1 THE COURT: Well it is some evidence of his modus
2 operandi and his thinking and Mr. Armstrong's reaction to
3 it. Even at that date he was developing lists of good guys
4 and bad guys, with the emphasis apparently on the bad guys.

5 I will receive it in evidence.

6 500-5C's, I don't know what this is. Oh,
7 these are these two tapes that relate to the attorney-client
8 privilege.

9 MR. HARRIS: Yes.

10 THE COURT: I am not going to receive these in
11 evidence, but I want to make it clear for the record that I
12 have not specifically ruled on the invocation of the
13 attorney-client privilege as it relates to the sort-out
14 operation. I did tentatively sustain the claim of privilege
15 as to everything that happened after a certain date. I
16 recall that, but the court has not passed upon any assertion
17 by the defense that for other reasons there might not be a
18 valid privilege.

19 MR. HARRIS: Will that remain sealed?

20 THE COURT: Yes, that will remain sealed. Nobody
21 can look at it and read it anyway.

22 MR. LITT: Your Honor, can I just have that clarified?

23 THE COURT: I wouldn't want anybody to say that well,
24 by reason of res judicata that I have ruled upon Mr. Flynn's
25 claim, that that may not be privileged because of either
26 a fraud, crime, exception to the attorney-client privilege.

(
27 He hasn't presented any evidence on that subject
28 other than what has been presented and I haven't ruled upon

20 June, 84
298

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY OF CALIFORNIA,	)	No. C 420153
)	
Plaintiff,	)	MEMORANDUM OF
)	INTENDED DECISION
vs.)	
)	
GERALD ARMSTRONG,)	
)	
Defendant.)	
<hr/>		
MARY SUE HUBBARD,)	
)	
Intervenor.)	
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In this matter heretofore taken under submission, the Court announces its intended decision as follows:

As to the tort causes of action, plaintiff, and plaintiff in intervention are to take nothing, and defendant is entitled to Judgment and costs.

As to the equitable actions, the court finds that neither plaintiff has clean hands, and that at least as of this time, are not entitled to the immediate return of any document or objects presently retained by the court clerk. All exhibits

1 received in evidence or marked for identification, unless
2 specifically ordered sealed¹, are matters of public record and
3 shall be available for public inspection or use to the same
4 extent that any such exhibit would be available in any other
5 lawsuit. In other words they are to be treated henceforth no
6 differently than similar exhibits in other cases in Superior
7 Court. Furthermore, the "inventory list and description," of
8 materials turned over by Armstrong's attorneys to the court,
9 shall not be considered or deemed to be confidential, private,
10 or under seal.

11 All other documents or objects presently in the possession
12 of the clerk (not marked herein as court exhibits) shall be
13 retained by the clerk, subject to the same orders as are
14 presently in effect as to⁸ sealing and inspection, until such
15 time as trial court proceedings are concluded as to the severed
16 cross complaint. For the purposes of this Judgment, conclusion
17 will occur when any motion for a new trial has been denied, or
18 the time within such a motion must be brought has expired
19 without such a motion being made. At that time, all documents
20 neither received in evidence, nor marked for identification
21 only, shall be released by the clerk to plaintiff's
22 representatives. Notwithstanding this order, the parties may
23
24

25 1. Exhibits in evidence No. 500-40; JJJ; KKK; LLL; MMM;
26 NNN; OOO; PPP; QQQ; RRR; and 500-QQQQ.

27 Exhibits for identification only No. JJJJ; Series
28 500-DDDD, EEEE, FFFF, GGGG, HHHH, IIII, NNNN-1, OOOO, ZZZZ,
CCCCC, GGGGG, IIIII, KKKKK, LLLLL, OOOOO, PPPPP, QQQQQ, BBBBBB,
OOOOOO, BBBB BBB.

(
1 at any time by written stipulation filed with the clerk obtain
2 release of any or all such unused materials.

3 Defendant and his counsel are free to speak or communicate
4 upon any of Defendant Armstrong's recollections of his life as
5 a Scientologist or the contents of any exhibit received in
6 evidence or marked for identification and not specifically
7 ordered sealed. As to all documents, and other materials held
8 under seal by the clerk, counsel and the defendant shall remain
9 subject to the same injunctions as presently exist, at least
10 until the conclusion of the proceedings on the cross complaint.
11 However, in any other legal proceedings in which defense
12 counsel, or any of them, is of record, such counsel shall have
13 the right to discuss exhibits under seal, or their contents, if
14 such is reasonably necessary and incidental to the proper
15 representation of his or her client.

16 Further, if any court of competent jurisdiction orders
17 defendant or his attorney to testify concerning the fact of any
18 such exhibit, document, object, or its contents, such testimony
19 shall be given, and no violation of this order will occur.
20 Likewise, defendant and his counsel may discuss the contents of
21 any documents under seal or of any matters as to which this
22 court has found to be privileged as between the parties hereto,
23 with any duly constituted Governmental Law Enforcement Agency
24 or submit any exhibits or declarations thereto concerning such
25 document or materials, without violating any order of this
26 court.

27 ///

28 ///

1 practice of culling supposedly confidential "P.C. folders or
2 files" to obtain information for purposes of intimidation
3 and/or harassment is repugnant and outrageous. The Guardian's
4 Office, which plaintiff headed, was no respecter of anyone's
5 civil rights, particularly that of privacy. Plaintiff Mary Sue
6 Hubbard's cause of action for conversion must fail for the same
7 reason as plaintiff Church. The documents were all together in
8 Omar Garrison's possession. There was no rational way the
9 defendant could make any distinction.

10 Insofar as the return of documents is concerned, matters
11 which are still under seal may have evidentiary value in the
12 trial of the cross complaint or in other third party
13 litigation. By the time that proceedings on the cross
14 complaint are concluded, the court's present feeling is that
15 those documents or objects not used by that time should be
16 returned to plaintiff. However, the court will reserve
17 jurisdiction to reconsider that should circumstances warrant.

18 Dated: June 20, 1984


19 
20 PAUL G. BRECKENRIDGE, JR.
21 Judge of the Superior Court
22
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EXHIBIT F

Date FEB. 11, 1985

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

HONORABLE P G BRECKENRIDGE, JR JUDGE

Deputy Sheriff

J SALGADO

Court Attendant

R HART

Deputy Clerk

N HARRIS

Reporter

(Parties and counsel checked if present)

C 420 153

CHURCH OF SCIENTOLOGY OF
CALIFORNIA,

VS

GERALD ARMSTRONG,

MARY SUE HUBBARD-INTERVENOR

Counsel for Litt & Stormer for Intervenor
Plaintiff BY: Michael S. Magnuson ✓

Peterson & Brynan for Plff

Counsel for BY: John G. Peterson ✓

Defendant Michael Lee Hertzberg ✓ -Pro Hac
Vice for Plff and Intervenor
Overland, Berke, Wesley, Gits,~~NATURE OF PROCEEDINGS~~

Randolph & Levanas for X-defits

BY: Donald C. Randolph ✓

BY: Jeffrey B. O'Toole ✓ O'Toole, Bisceglie & Walsh-Pro Hac Vi
for plff in Washington case

Rabinowitz, Boudin, Standard,

Krinsky & Lieberman -Washington case

BY: Edward Copeland ✓

United States Attorney

BY: John W. Toothman ✓ and

Janet M. McClintock ✓

for moving party

NATURE OF PROCEEDINGS:SECOND NOTICE OF MOTION OF THE UNITED STATES, A NON PARTY, TO INSPECT
AND COPY CERTAIN SEALED DOCUMENTS

Motion resumes from December 3, 1984.

Responding party objects to this Court hearing any further matters
until the issue of the 170.6 is resolved by the Appellate Court.
Request of responding party for a Stay until the "...Appellate
Process has run its course", is denied.

Motion argued.

Motion denied as to exhibits 500-4D's through 4i's, 5C's, 5G's, 5i's,
6B's and 6O's; Motion granted as to exhibits 500-4Q's, 5K's, 5L's,
5O's, 5P's and 5Q's.**The Court finds a waiver of the privilege and
further as to exhibit 500-5K's, said exhibit does not fall within
the spousal privilege.Motion of responding party for an order sealing the declarations
of Sullivan and Armstrong, granted; said declarations are sealed
for this proceeding only.

STAY OF EXECUTION IS GRANTED FOR TEN DAYS.

Counsel for moving party to prepare an order including a protective
order, serve on responding party and submit to the Court for
signature.

**subject to protective order

(2)

DEPT. 57

MINUTES ENTERED

2-11-85

COUNTY CLERK

EXHIBIT G

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT NO. 57

HON. PAUL G. BRECKENRIDGE, JR., JUDGE

4
5 CHURCH OF SCIENTOLOGY OF CALIFORNIA,)

6 Plaintiff,)

7 vs.)

8 GERALD ARMSTRONG,)

9 Defendant.)

No. C 420 153

10
11 MARY SUE HUBBARD,)

12 Intervenor.)

13
14
15 REPORTER'S TRANSCRIPT OF PROCEEDINGS

16 MONDAY, FEBRUARY 11, 1985

17
18 APPEARANCES:

19 (See next page)

20
21
22
23
24
25
26
27 COPY

28 NANCY L. HARRIS, CSR #644
Official Reporter

1 APPEARANCES:

2
3 For the Plaintiff
4 and Intervenor:

LITT & STORMER
BY: MICHAEL S. MAGNUSON
3550 Wilshire Blvd., Suite 120
Los Angeles, CA 90010

5
6 For Plaintiff only:

PETERSON & BRYNAN
BY: JOHN G. PETERSON
8530 Wilshire Blvd., Suite 407
Beverly Hills, CA 90211

7
8 For Plaintiff and
9 Cross-Defendant:

OVERLAND, BERKE, WESLEY, GITS,
RANDOLPH & LEVANAS
BY: DONALD C. RANDOLPH
10951 West Pico Blvd.
Suite 300
Los Angeles, CA 90064

10
11 For the Founding
12 Church of Scientology
13 and Intervenor:

MICHAEL LEE HERTZBERG
Pro Hac Vice
275 Madison Avenue
New York, New York 10016

14 For the Plaintiff
15 Class of the Founding
16 Church of Scientology:

O'TOOLE, BISCEGLIE & WALSH
BY: JEFFREY B. O'TOOLE
Pro Hac Vice
1776 K Street, N.W.
Suite 900
Washington, D.C. 20006

17
18 -and-

19 RABINOWITZ, BOUDIN, STANDARD,
KRINSKY & LIEBERMAN
BY: EDWARD COPELAND
740 Broadway
20 New York, N.Y. 10003

21
22 For the Superior Court
23 and Clerk of the Superior
24 Court:
(Not Present)

JOHN H. LARSON, County Counsel
BY: GORDON TRASK,
Deputy County Counsel
648 Hall of Administration
Los Angeles, CA 90012

25 For the United States:

26 UNITED STATES ATTORNEY
BY: JOHN W. TOOTHMAN and
JANET M. McCLINTOCK
Assistant U. S. Attorneys
27 U. S. Department of Justice
10th and Pennsylvania Avenue, N.W.
Room 317
28 Washington, D.C. 20530

Also present:

GERALD ARMSTRONG

1 LOS ANGELES, CALIFORNIA; MONDAY, FEBRUARY 11, 1985; 9:15 A. M.

2 -oOo-

3 THE COURT: Well, good morning.

4 MR. RANDOLPH: Good morning, Your Honor.

5 THE COURT: All right. We have the further proceedings
6 on this motion by the United States Government to have access
7 to certain exhibits which the court has previously sealed.
8 A lot of documents have been submitted to the court, and I will
9 state for the record that I have read and considered them,
10 submitted by both sides.

11 There are some objections to certain declarations
12 submitted by Gerald Armstrong and Laurel Sullivan, and those
13 will be deferred until later. I want to sort these things out
14 here.

15 All right, well, let's see. I don't know whether
16 I recognize everybody here. Can we have the names for the
17 record?

18 MR. RANDOLPH: Yes, Your Honor. I am Donald Randolph.
19 I represent the Church of Scientology of California in the
20 cross-complaint.

21 MR. O'TOOLE: Good morning. I am Jeff O'Toole. I was
22 here December 3rd. I represent the Church in the case in
23 Washington.

24 MR. HERTZBERG: Good morning, Your Honor. I also
25 had the pleasure of being here on the 3rd of December. I am
26 Michael Hertzberg, and I am representing Mrs. Hubbard in this
27 matter and we will be arguing on behalf of both Mrs. Hubbard
28 and the Church of Scientology.

1 MR. PETERSON: John Peterson. I represent the Church
2 of Scientology of California in the underlying complaint.

3 MR. MAGNUSON: And Michael Magnuson on behalf of Mary
4 Sue Hubbard in the underlying complaint.

5 MR. HERTZBERG: We also have a new face with us
6 today. Mr. Edward Copeland is in the firm of Rabinowitz,
7 Boudin, Standard, Krinsky & Lieberman.

8 I didn't actually think to ask Mr. Copeland's
9 qualifications before I addressed the court. I am sure he is
10 very well qualified. I have known him for a number of years.
11 He is a member of the New York Bar and various courts.

12 If we reach discrete issues with respect to the
13 motion to strike or seal various declarations, Mr. Copeland
14 is the person that we would request to address the court on
15 that.

16 THE COURT: As I said before, that is the last thing I
17 want to take up today.

18 MR. TOOTHMAN: Your Honor, I am John Toothman of the
19 United States Department of Justice. With me today is Janice
20 McClintock, also of the United States Department of Justice.

21 MS. McCLINTOCK: Good morning, Your Honor.

22 THE COURT: All right. Well, we are going to first deal
23 with the motion relative to the different exhibits.

24 MR. RANDOLPH: Your Honor, I wonder if I might interrupt
25 for a moment as representative of the Church of Scientology
26 in the cross-complaint.

27 The court is aware that there is a 170.6 challenge
28 to this court's jurisdiction which is still pending in the

1 Court of Appeal by way of writ of prohibition and in the
2 alternative mandamus.

3 Therefore, it is the Church's position that
4 inasmuch as the rulings that the court -- the issues presented
5 to the court this morning undertake to affect the rights and
6 potential exhibits in that case, we feel that this court has
7 been divested of jurisdiction until the Court of Appeal has
8 ruled in order to undertake the issues before this court.

9 THE COURT: All right. You have made your statement.

10 MR. RANDOLPH: Your Honor, secondarily, I wish to note
11 that I hope that the court will accept that my presence here,
12 having made that statement, can be in no way designated as a
13 waiver of our challenge to the court under the 170.6 challenge.

14 THE COURT: Well, you have made your statement.

15 MR. TOOTHMAN: I think we want to make one statement,
16 also.

17 THE COURT: I am going to make this statement. We are
18 not going to have about five different people from the plaintiff
19 or cross-defendants here arguing on these exhibits. We will
20 deal with one exhibit at a time and/or a group of exhibits,
21 and only one counsel is going to argue on behalf of the
22 plaintiff or cross-defendants on that particular aspect. We
23 are not going to have a round-robin type of situation here,
24 and I am not going to get sandbagged between half a dozen
25 different lawyers for the plaintiff or the cross-defendants.
26 You can make your mind up who is going to address the court
27 on a particular exhibit or group of exhibits and that will be
28 it. 3

1 this, also, but I don't see any relevancy. It doesn't really
2 add up to much, so I will sustain the objection.

3 I think that leaves us with five C's. I have never
4 heard these tapes played. I have seen some, I think, drafts
5 of portions and I think parts of them.

6 There is a different problem here as far as the
7 attorney-client privilege is concerned, because it is my
8 recollection of the evidence that these were turned over to
9 Mr. Armstrong as being blank tapes, so that I felt at the time
10 there wasn't any intelligent waiver, giving over of confidential
11 communications, something that was still in confidence.

12 I know that there were attorneys involved in these
13 conversations that were played on tape and attorneys have
14 submitted declarations which I don't question.

15 These are responsible, ethical lawyers in the
16 Los Angeles community that have made these representations and
17 I accept them as what they are. The problem, as a legal
18 proposition, is that notwithstanding what the lawyers may feel
19 about whether they are acting honestly and in good faith, what
20 if the people they are consulting with are not and are seeking
21 to use the lawyers to seek to achieve some unlawful purpose,
22 although the lawyers are acting honestly and in good faith.
23 At least that seems to me the posture of the case or the issue
24 here.

25 The declarations of Mr. Armstrong and Miss Sullivan,
26 and then there is a contrary declaration by Ms. Britowich.

27 So with that in mind, I will hear from both sides.
28 Since³ the government is the moving party on this, I will hear

1 them first.

2 MR. TOOTHMAN: Your Honor, we have argued two reasons
3 why even if the attorney-client privilege applies, why the
4 court cannot find it's been overridden on this situation.

5 The first ground is waiver. We find a waiver from
6 two different sets of circumstances.

7 The first is how the tapes came into Mr. Armstrong's
8 possession. We have submitted a new declaration from
9 Mr. Armstrong which we submitted with our reply brief. It
10 explains how he got the tapes, and in that declaration it seems
11 plain that there was an understanding of what the tapes were
12 and why they were being given to him, and there was a knowing
13 waiver or giving of the tapes to Mr. Armstrong for his turning
14 them over to Mr. Garrison.

15 Second of all, Your Honor, the Church has made
16 various arguments and statements about what MCCS was all about,
17 and we believe under Section 912, they at least engaged in a
18 limited waiver of the privilege with respect to these tapes,
19 because they made a significant disclosure of what the project
20 was all about, and the tapes would only be useful then to
21 determine whether or not the Church's representations were
22 correct.

23 Second of all, Your Honor, we have argued that the
24 tapes reflect the planning or commission of crimes or fraud
25 which would be an exception to the privilege, also. We have
26 offered to support our statement with various pieces of
27 information. We have offered declarations by Gerald Armstrong,
28 two of them, one of them attached to the reply and one attached

1 to our initial memorandum.

2 Both of these declarations describe the Mission
3 Category Sort Out, and it is based on his personal knowledge,
4 what its purposes were.

5 Second of all, we have offered a declaration from
6 Laurel Sullivan which also describes MCCA based on her personal
7 knowledge and concludes that the project was intended to plan
8 to commit the crime of fraud. These conclusions one can draw
9 from looking at these declarations. These declarations
10 represent extrinsic evidence of the crime of fraud involved.

11 Of course, the tape recordings themselves would
12 also be the best evidence of exactly what was going on in this
13 particular case in the course of MCCA.

14 To put this all in context, we have also offered
15 other extrinsic evidence of what MCCA might have been about
16 based in part on the stipulation of evidence from the Mary Sue
17 Hubbard crimes case, the Tax Court's decision and proceedings
18 in this case. These are all proceedings in which decisions
19 have been made which would suggest that MCCA was part of a
20 pattern.

21 Now we are not saying that the stipulation or the
22 Tax Court decision talked about MCCA specifically. They deal
23 with things that happened before MCCA, but they show the
24 pattern. They are circumstantial proof of the kinds of things
25 the Church has done to foil principally the IRS, basically to
26 mislead the IRS about L. Ron Hubbard's control of the Church,
27 the money he received from the Church and the Church corporate
28 structure. This is all being done as part of an elaborate

1 scheme to avoid responsibility under the law for paying taxes.

2 We believe that the Tax Court decision and the
3 stipulation of evidence are good, circumstantial evidence of
4 the types of things the Church was doing that might be construed
5 to be fraud or crime.

6 In fact, for instance, the Tax Court decision
7 specifically found that the Church had violated 18 USC Section
8 371, which has to do with tax evasion, I believe. However,
9 it is described completely in our brief.

10 We would also point out that in terms of technically
11 invoking the privilege with respect to the tapes, we do have
12 some technical problems. We understand that Your Honor is
13 satisfied that there were attorney-client communications going
14 on, but we would simply point out that our analysis of the
15 Murphy declaration and the Britowich declaration submitted by
16 the Church shows that it is very confused about exactly what
17 was going on, who was there, who they represented, whether
18 there actually was an attorney-to-client communication for
19 purposes of seeking legal advice.

20 It even appears from Mr. Murphy's declaration that
21 he probably wasn't even attending the very meetings in question
22 here, at least we haven't seen any indication that he was from
23 either of the declarations, and he doesn't come out and say
24 it in so many words.

25 That is all we have to say, Your Honor.

26 THE COURT: Mr. Hertzberg?

27 MR. HERTZBERG: Yes, Your Honor.

28 As I think the court recognized in its preliminary

1 remarks, this court has previously rejected, in the transcript
2 at Page 4636, this waiver argument that the government is
3 attempting to resuscitate, an argument that was made by
4 Mr. Flynn, the exact same argument at trial, and there is
5 nothing factually in the new Armstrong declaration which was
6 submitted by the government.

7 After we had pointed out what the law was on this
8 issue and the prior ruling of the court, there is nothing new
9 which could in any way enable this court to find that there
10 was a waiver.

11 I think that clearly the point that they are
12 pinning all their hopes on is this generalized, fairly
13 unspecific crime of fraud allegation which they make, in
14 essence, in the following way.

15 Mr. Toothman referred to the stipulation of
16 evidence in the criminal case. Of course, that criminal case
17 had nothing to do with control of the Church and the IRS and
18 whatever the Church's corporate relationships might be among
19 various entities and Mr. Hubbard. Mr. Toothman knows that.

20 He also acknowledged and conceded that the Tax
21 Court case was four years before these tapes were involved.
22 I want to pause for a moment when we discuss the Tax Court
23 decision because the Tax Court decision which found that there
24 was inurement did not -- and which is on appeal, is exactly
25 an example of the kind of reason that one retains corporate
26 and tax expert attorneys to help one avoid these kinds of
27 problems.

28 Inurement in itself is not a fraud and inurement

1 is not a crime. The result of inurement is one loses a
2 possible tax benefit, a tax exemption. Nothing nefarious about
3 that but, of course, an organization that might have had a
4 certain amount of disarray in its corporate and interpersonal
5 structures might want to avail themselves of a tax exemption
6 and all the tax benefits that any United States citizen would
7 normally want to avail themselves if they are available.

8 So, what do they do? They go and consult attorneys,
9 attorneys who are experts in these matters, to straighten
10 things out. Lay people can't straighten these things out, and
11 I think that is significant, too. Attorneys straighten them
12 out, and there is no dispute that essentially attorneys were
13 brought in here to help the church at a juncture subsequent
14 to the years in which later on inurement was found, to help
15 the church restructure its organizations.

16 Now, the Armstrong case, which is the only other
17 proceeding that Mr. Toothman incorporates by reference to the
18 crime/fraud theory, it seems to be Mr. Toothman is relying on
19 the findings of this court, which have yet to be held on appeal,
20 about some bad acts, a private dispute between Mr. Armstrong
21 and the Church which has become public, unfortunately, in
22 litigation, and I think the picture he is trying to paint is
23 the Church is bad. Mr. Hubbard is bad.

24 . Look at a general pattern, Judge. That is what
25 Mr. Toothman is saying. Look at a general pattern. These are
26 bad people. Everything they do, even when they hire attorneys
27 and consult with them, has to be for a bad purpose.

28 That is the kind of theory that we are hearing,

1 and I submit that that is not enough. That is not sufficient
2 in the context of these tapes.

3 Now, let's look at these particular declarations,
4 because that is the only other thing that the government relies
5 on for their independent proof. Not only will I hope to
6 convince this court that those declarations did not support
7 the government's position, but, in fact, I think that the
8 declaration of Laurel Sullivan is very close, closely aligned
9 to the declaration of Lisa Britowich and of the attorney
10 Murphy, and that it, in fact, substantiates our position on
11 the presumptively privileged and legitimate aspect of these
12 conferences.

13 We will turn to Mr. Armstrong first. The first
14 declaration that Mr. Armstrong submitted, your Honor, is
15 essentially a recycling of a prior declaration that he
16 submitted in this case, which was sealed by this court at
17 Page 4692 of the transcript, and why does the court seal it?
18 Because Mr. Armstrong does something impermissible in the
19 context of California evidentiary law.

20 He relies on the contents of the privileged
21 document to try to pierce the privilege. That is what this
22 first declaration is.

23 As you know, Your Honor, there is pending, as Your
24 Honor referred to earlier in the hearing, as indicated, we will
25 defer to the end of the day, there is a brief which indicates
26 why this declaration and his second declaration and
27 Miss Sullivan's declaration are not properly in the record.
28 All three of them are not properly in the record in this court.

1 This one is just a retread. It is almost identical
2 if it is not, in fact, the identical declaration that was
3 excluded by this court at Page 4692.

4 While I am at that, while I have touched for the
5 moment on the prior rulings of this court, let me indicate to
6 this court, remind this court of what other evidentiary rulings
7 it made at the trial on these tapes.

8 At 4367 the court found that the conversations
9 were presumptively within the attorney-client privilege, also
10 at Pages 259 and '60.

11 This court, as you will recall, restricted Laurel
12 Sullivan's testimony at trial to facts that she learned before
13 February '80 -- excuse me, before February of 1980, the time
14 that the first of the two MCCS Missions started up.

15 This court sealed or struck the Armstrong
16 declaration, which is similar to the new one that the
17 government is submitting, out. As I indicated and this court
18 said at several points, you can't show the tapes are not
19 privileged by the contents.

20 I think Your Honor is aware of that and accepts
21 that as a premise for our discussion today.

22 Now, let's turn to the second Armstrong declaration.
23 It is interesting for several reasons.

24 First of all, the kinds of allegations it makes,
25 it goes way beyond anything that Laurel Sullivan said, and as
26 Your Honor will recollect at trial, it was Mr. Flynn's position,
27 and I think it was accepted by this court, that if anybody
28 knew or the person who knew more about the MCCS Mission between

1 Mr. Armstrong and Miss Sullivan had to be Miss Sullivan. That
2 Mr. Armstrong's position was tangential, to say the least, and
3 yet Mr. Armstrong makes these extremely overbroad, generalized
4 allegations, including the one at paragraph 2 on Page 3 -- I
5 think it is misnumbered, should be Page 2, in which he says
6 all of the activities performed by anyone involved in the MCCS
7 Mission, including the attorneys, was done for a fraudulent
8 purpose and, in fact, Your Honor, the government's theory in
9 their papers was that the attorneys were active participants
10 in this fraud.

11 It is in their briefs, and Your Honor, I think,
12 in beginning this and leaving open the possibility, left open
13 the possibility that the attorneys were dupes, that these
14 attorneys, who are prominent firms in this city, were so
15 unsophisticated that they could be used by the people of the
16 Church of Scientology to perpetrate a fraud. That they could
17 be used in the furtherance of a fraud.

18 This is not even the government's theory. That
19 is not what Mr. Armstrong says. Mr. Armstrong says the lawyers
20 were part of the fraud, and I think this court should hold
21 their feet in the fire, that if you don't buy that theory, it
22 all goes out the window because that is what Mr. Armstrong is
23 saying. He is putting his credibility on the line, and that
24 is what the government says in their brief, I think, at Page
25 21. I am not sure.

26 Then he makes the conclusionary statement in
27 paragraph 3:

28 "The two meetings which were described

1 "In my prior affidavit were part of a series
2 of meetings whose purpose it was to obtain
3 the fraudulent and illegal objective of
4 the MCCS Mission."

5 He says those meetings had to be part of it. That
6 is pretty interesting. Let me tell you what there is in this
7 record, Your Honor, that could support a finding by Your Honor
8 that Mr. Armstrong was not in a position to make that kind of
9 allegation.

10 As the court will recall, there was a representation
11 made, not rebutted by Mr. Flynn at the trial, that there were
12 two stages of the MCCS project. There was a first project that
13 began in 1980 in February, and then there was a second MCCS
14 project which began in July of 1980, six months later, and that
15 it had a separate set of mission orders.

16 Mr. Armstrong, who clearly doesn't say he attended
17 these meetings and who clearly doesn't describe what relation-
18 ship he had, what positions he was in to observe what the
19 purpose of the second MCCS project was which was going on in
20 September of 1980 when these meetings occurred, Mr. Armstrong
21 doesn't tell you why he would know anything about that and,
22 in fact, the record will indicate that he couldn't because we
23 have, Your Honor, a declaration of Mr. Armstrong made up in
24 1982, not one of these recent declarations in contemplation
25 of this litigation by, let's face it, a hostile or adverse
26 witness who has been sued by the Church and now has a claim
27 pending against him. 1982, Your Honor.

28 What does Mr. Armstrong say in 1982 before he

1 talks to the government or before he knew what the issues
2 might be here. I will begin with paragraph 12:

3 "In or about June of 1980 I became
4 free of my MCCA and Purification campaign
5 duties and was able to spend more time on
6 the archives materials."

7 Et cetera, et cetera.

8 That is interesting. One month before the second
9 MCCA project, which was the one that is at issue here, he is
10 free of his MCCA duties. And then we have a little help in
11 paragraph 14 from Mr. Armstrong as to what he was doing after
12 he was free from them:

13 "In September of 1980" -- I quote --
14 "I met Mr. Garrison in England and discussed
15 with him the possibility of him writing the
16 biography and what documentation and assistance
17 would be made available."

18 Now, September is when these two meetings took
19 place, the 28th and 29th, according to the government. We
20 don't quibble with that.

21 What was Mr. Armstrong doing in September?
22 According to the record in this case, Exhibit 9, Your Honor,
23 in September, including the 28th and 29th of September when
24 these meetings took place, when these lawyers were in the most
25 concentrated aspect of their consultations and meetings with
26 the client, Mr. Armstrong is in England because, according to
27 Exhibit 9, this voucher that Mr. Armstrong with his signature
28 submitted for reimbursement, among other things, phone calls

1 made in England in pence, five pay phones in U.K. on the 28th.
2 There are some of them on the 27th, on the 29th and days after-
3 ward.

4 Mr. Armstrong wasn't here, Your Honor. I would
5 submit that in view of what this court knew already about
6 Mr. Armstrong's tangential relationship to the project at its
7 inception, what this court knows from this declaration about
8 Mr. Armstrong's total noninvolvement with the second stage of
9 the MCCS project, the stage that Mr. Murphy's declaration
10 addresses, this court's knowledge from Exhibit 9 that
11 Mr. Armstrong and from his own declaration was in England
12 during the time of the meetings we are talking about, two-
13 specific meetings, when we talk about these tapes, the
14 discrepancies between what Mr. Armstrong is willing to say and
15 including allegations that the lawyers were involved in fraud,
16 and Ms. Sullivan is willing to say, I say to Your Honor that
17 you should not give any weight to Mr. Armstrong's second
18 declaration.

19 You must disregard his first one because it
20 contravenes the prior rulings of this court in accordance with
21 the California statutes, which does not allow these kinds of
22 conclusionary allegations to be made on the basis of the
23 material which they are seeking to pierce.

24 Let's turn to Miss Sullivan's declaration, because
25 this is the one I like. This is dated August 20, 1984, and
26 it consists of 19 paragraphs. This is a big independent proof,
27 Your Honor, on the crime of fraud.
28

Incidentally, I know parenthetically I don't think the government is serious about the crime allegations and they have back-pedaled severely in their reply papers because after they read our listing of the statutes, they cited that they may have violated this statute, they may have violated that statute, they could have violated this statute, and when we cited the law to the government on how mere allegations of counsel and speculation are not sufficient, they didn't seriously press it.

They, I think, realistically, Your Honor, are pursuing the theory of a fraud, a fraud in which the lawyers participated knowingly and turning to the two paragraphs here which Miss Sullivan addresses the Corporate Sort-Out, I want to focus on paragraph 17 in which she describes the exact sequence of events, and I am going to read the whole paragraph:

"Numerous proposals for this restructuring were developed and discussed by high officials of the Church."

Now, listen to this:

"Legal advice was also sought to ascertain whether the restructuring could be accomplished legally. The project dragged on for longer than necessary because of a disagreement I had with David Miscavige. I was unwilling to structure the Church in a fashion whereby L. Ron Hubbard could continue to assume control at any moment.

.2
1 I determined that for L. Ron Hubbard's own
2 safety he should never" --

3 THE COURT: There is no "never" in there.

4 MR. HERTZBERG: I am sorry. Did I say "never"?
5 I meant "sever, he should sever all controls." I misspoke,
6 Your Honor.

7 "I determined that for L. Ron Hubbard's
8 own safety he should sever all controls.
9 Miscavige insisted that L. Ron Hubbard be
10 able to maintain control. Therefore,
11 Mission Corporate Category Sort-Out was
12 disbanded ... " et cetera, et cetera.

13 First of all, out of Miss Sullivan's own
14 mouth, and this is a much more narrow and I think proper
15 interpretation of what was going on, the legal advice was
16 also sought so as to ascertain whether the restructuring
17 could be accomplished legally.

18 That fits in exactly with Lisa Britowich's
19 declaration. It is not inconsistent with it in any way.
20 It is completely and entirely consistent with Mr. Murphy,
21 the attorney's declaration.

22 What I find very interesting here, in
23 addition, Your Honor, is the statement that there was a
24 dispute within the Church about how to utilize the on-going
25 advice that was being given by the attorneys. This doesn't
26 speak of a single fraudulent, omnipotent fraudulent
27 purpose as implied by Mr. Toothman in their papers and in
28 their argument. There was discussion. There was eventually

1 a dispute about what course of action to follow.

2 Subsequently other lawyers were hired.

3 Now, Your Honor, that doesn't bespeak of
4 this fraudulent purpose at all. That bespeaks of an
5 attorney-client relationship in the traditional sense in
6 which lawyers are hired to consult, to be consulted, to
7 determine whether corporate restructuring could be done,
8 how it can be done in a legal way, and then a discussion
9 internally about how to utilize their advice. Then, in
0 fact, at the end significantly hiring other lawyers, not
1 going off on their own, the Church hiring other lawyers for
2 advice.

3 I would presume that you would ascribe for all
4 lawyers from your remarks that they would not be party,
5 that there would be a presumption by this court, that they
6 would not be a party to a fraud.

Now, let's turn to what is against this
7 declaration and let's leave aside Lisa Britowich's declaration
8 for a moment. Let's look at Mr. Murphy's declaration.
9 What does Mr. Murphy tell us? He is from a prominent firm,
0 the Rosenfeld firm. There were other prominent firms
1 involved; Ball, Hunt and Ervin, Cohen & Jessup. These are
2 names which I understand are among the cream of the cream
3 in Los Angeles corporate law firm world. He is in there
4 and this is a man of experience. This is not a man who
5 is one year out of law school, Your Honor. He has many
6 years of experience in his area of expertise is in corporate
7 and tax matters, Your Honor, and he has a colleague from

6.4

1 the firm whose area of expertise is intellectual property.
2 All these areas of expertise are exactly coincident with
3 what Lisa Britowich said is the purpose of this MCCS project
4 which was to sort out the Corporate problems that may have
5 existed which we know, in fact, from the tax court decision,
6 if it is upheld, probably did exist, and to look out for the
7 different, separate Corporate lines which included, of
8 course, the entertainment kinds of fields because obviously
9 some of the properties dealt with writings of Mr. Hubbard,
10 films of Mr. Hubbard.

11 We don't have some clients going to some
12 perhaps second or third-rate lawyer or firm and slinking
13 into the night and asking them for advice, Your Honor.
14 There was a whole line-up of people there. There were
15 many attorneys, and they were in areas of specialty, the
16 appropriate specialties, Your Honor, for exactly this
17 kind of project.

18 Mr. Murphy says he dealt with Laurel Sullivan
19 on almost a daily basis, that Laurel Sullivan knew that the
20 purpose of this mission, what it was, that there should be
21 attorney-client privilege confidentiality, and most
22 important of all, Mr. Murphy points out that there was
23 full disclosure to him, lots of disclosure. There was lots
24 of paper going back and forth between the law firms and
25 the client and, of course, there were the conferences,
26 lots of consultations, Your Honor.

27 This isn't somebody going to somebody and
28 saying, "How can I get a phony export license? How can I

1 get around this? How can I get around that?"

2 There are all these lawyers there, Your
3 Honor. They are all from prominent firms. They are doing
4 what they do all the time. They are giving a corporate
5 client with multiple tax and corporate problems advice in
6 a sophisticated way about how to handle these matters and
7 make right anything that was wrong and, of course, the
8 government recognizes from the Upjohn case and all the other
9 cases that that is exactly what you do when you go to a
10 lawyer.

11 You can't very well have a lawyer help you
12 if you don't tell him where the skeletons are in the closet.
13 You can't do that, so, of course, in the course of the
14 communications, including apparently these conferences,
15 there was a frank discussion about where the state of
16 affairs were at the time, but that doesn't mean, it
17 doesn't follow from that that these discussions were in
18 furtherance of a future crime or fraud which, of course,
19 Your Honor knows is what is required by the statute and the
20 other things Mr. Murphy says are there was not any indicia
21 of crime or fraud in his view, not an indicia of it or he
22 and his firm would have withdrawn.

23 I submit to Your Honor if the government
24 abandons their theory as stated in their brief that the
25 lawyers were part and parcel, knowing participants in this
26 crime and fraud and now argues, because you have left that
27 crack open, the possibility that they were unwitting dupes,
28 you are doing a tremendous disservice to Mr. Murphy and his
3

1 firm, and all the other lawyers who are out there.

2 We submitted Mr. Murphy's declaration because
3 we think it will be dispositive, but you have to imply that
4 none of those people knew that they were having the wool
5 pulled over their eyes by people who never went to law
6 school, by people who were working in the church. That
7 is what is implicit in even the unwitting dupe argument,
8 Your Honor, which is the one you addressed, and I would
9 say, Your Honor, that is unrealistic.

10 I want to indicate as far as your consideration
11 of the tapes is concerned, this is our position and it is
12 supported by the case law. It is clear that in the first
13 instance in considering whether they can make a prima facie
14 case that overrides the privilege, it is abundantly clear
15 and has been recognized by this court that you may not go
16 to the contents of the case. You must only look at their
17 purported independent evidence. Now, if you find that there
18 is a prima facie case, and we all know what prima facie
19 means, the lawyers and the judges. Prima facie means
20 a threshold showing. We do not believe it is at that point
21 that you can listen to the tapes and argue and we would
22 also at that point suggest that there be an in-camera
23 submission of various documents that we would make, including
24 the Mission Corporate Sort-Out order that applied to this
25 Mission which is applicable, which is directly applicable
26 here, and other materials which we consider privileged,
27 Your Honor, and we would submit those to you in camera and
28 then you can resolve what it is that might be inconsistent,

1 if there are inconsistencies between what Laurel Sullivan
2 says and what Jim Murphy and Lisa Britowich say.

3 That has to be the second step. Prima facie
4 means just what it means. It means prima facie, and we
5 maintain that they are nowhere near having a prima facie
6 case on this record before Your Honor, nowhere near it,
7 keeping in mind Mr. Murphy's declaration especially and
8 the language of Laurel Sullivan's declaration, knowing how
9 the advice of the attorneys was considered by the Church.

10 But if you do find that they reached a prima
11 facie case, that is the beginning of the inquiry. It is
12 not the end of the inquiry. Then, at that point you can do
13 what Mr. Toothman suggests you do but which the California
14 law doesn't say you can do, and that is listen to the tapes.

15 THE COURT: Anything further, Mr. Toothman?

16 MR. TOOTHMAN: I will try to be brief.

17 Your Honor, we brought Laurel Sullivan and
18 Gerry Armstrong to the courtroom today. If there is
19 any question about what they meant by their declarations
20 or whether declarations might be inadequate, we'd be more
21 than happy to put them on the stand and have them testify.

22 I will be done in a few minutes.

23 First of all, Mr. Hertzberg's description of
24 the tax court decision left out a couple of things. He
25 did admit that the tax court decision concerns inurement
26 to Mr. Hubbard and his family. He omitted to describe
27 the fact that the holding is also based on the court's
28 finding that the Church was engaged in a commercial

1 enterprise, and that this Church's behavior was against
2 public policy and therefore that the Church was not entitled
3 to tax exemption.

4 Your Honor, perhaps the best evidence of what
5 went on at MCCS on that day is the fact that as Mr. Armstrong
6 has stated in his declaration based on his listening to the
7 tapes which were given to him and then from him to
8 Mr. Garrison, in the words of the Church's own attorney,
9 Mr. Parcelle, he described what had happened as fraud.
10 I think there couldn't be any more powerful evidence of
11 exactly what went on that day.

12 The attorneys' intent and the fact that they
13 belonged to reputable law firms, and the fact that they
14 are extremely reputable attorneys in particular fields is
15 not relevant, Your Honor. It is the intent of the clients.
16 Your Honor has already pointed this out and we pointed it
17 out in our briefs.

18 We are not saying these attorneys were
19 involved in the fraud. We are not saying they were duped.
20 We are not saying anything about that. The only thing we
21 are concerned with is the Church's intent.

22 As Mr. Hertzberg has acknowledged, we need
23 only make a prima facie showing, which is something more
24 than a bare allegation. I think we have done this. We
25 have three declarations. We have declarations based on
26 other proceedings. I think it should be adequate. We
27 don't believe a further hearing is necessary. We have
28 been through this for six months already.

1 When we suggested that evidence should be
2 offered today, the Church spent a great deal of time and
3 effort to make sure that couldn't be done. If Your Honor
4 listens to the tapes or perhaps just based on the
5 declarations we have offered, I think that there is ample
6 evidence for the court to conclude according to any
7 standard that the crime fraud exception to the privilege
8 has been established.

9 Turning to Mr. Armstrong's first declaration,
10 it is not true that it is all based just on his listening
11 to the tape recordings. Mr. Hertzberg has testified himself
12 personally at length about where Mr. Armstrong was at various
13 times.

14 I think Mr. Armstrong is very clear that he
15 is talking about, number one, his knowledge of MCCS, his
16 personal knowledge of MCCS which is, even Mr. Hertzberg
17 seems to admit, is something that he could have had even
18 though he was in England on the particular days in question.

19 Second of all, he does quote from the tapes
20 themselves in referring to the declaration we submitted
21 with our memorandum. Mr. Armstrong unequivocally states
22 in paragraph 3 of his declaration:

23 "The purpose of MCCS was to
24 restructure the Church of Scientology and,
25 by so doing, conceal L. Ron Hubbard's control
26 of the Church of Scientology and develop
27 strategies to effectuate actual control
28 of Scientology by Mr. Hubbard without his

1 incurring legal responsibility for the activities
2 of the Church of Scientology."

3 I think it is pretty clear that is not
4 conclusionary. He just states a fact. However, any
5 lawyer can look at these facts and wonder about whether
6 fraud had been committed or even a crime.

7 Mr. Armstrong's second declaration in
8 paragraph 2 he again discusses the initiation of the MCCA
9 Mission which Mr. Hertzberg has admitted Mr. Armstrong is
10 privy to, and in the third sentence of his second paragraph
11 of this particular declaration which was submitted with
12 our reply brief as exhibit C, Mr. Armstrong states:

13 "This" — meaning the MCCA —
14 "was done to hide Hubbard's control of the
15 Church of Scientology and the numerous benefits
16 he inured from it."

17 That is based on his personal knowledge of
18 what was going on at that time because he was involved in
19 the MCCA up to a certain point.

20 Finally, Mr. Hertzberg discusses Laurel
21 Sullivan's declaration at length. He particularly focuses
22 on paragraph 17. I would focus on paragraph 16 which
23 discusses again the purposes of MCCA and states:

24 "The structure I was to establish
25 was also intended to facilitate the funneling
26 of Scientology funds to L. Ron Hubbard to
27 avoid impairing the tax-exempt status of the
28 Church due to the distribution of Church funds

1 for Mr. Hubbard's personal benefit."

2 She continues:

3 "Another goal of this project
4 was to insulate Mr. Hubbard from legal
5 process by creating the impression that
6 Mr. Hubbard was no longer associated with
7 the Church."

8 Again, these are not conclusionary statements.
9 They are facts that she knew. They are also facts that
10 suggest that the purpose of this program was to commit
11 fraud.

12 Just put this in context at the time MCCA
13 was being planned the tax court litigation which he discussed
14 in which he even offered the opinion from was then going
15 on, so it was most convenient that the Church could be
16 sitting down at that time to be doing this tax planning at
17 the same time that it was trying to take some sort of
18 litigation posture before the tax court.

19 Mr. Hertzberg has suggested that we are
20 withdrawing from our previous position on whether crimes
21 have been committed in addition to the fraud. Frankly,
22 Your Honor, we don't like to make allegations about whether
23 crimes have been committed until we see the evidence. We
24 believe based on what we know about MCCA from the
25 declarations and from these proceedings in the Armstrong
26 court that it is a possibility that crimes were being planned,
27 but we don't want to say without hearing the tapes whether
28 that is a fact or not.

1 We were using general language or language
2 that seemed to be conditional merely out of an abundance
3 of caution with respect to the Church. We didn't want to
4 make an accusation that we couldn't prove.

5 Finally the MCCS project was clearly a
6 planning project. It wasn't a project based on just the
7 review of historical facts. I believe Mr. Murphy's
8 declaration, also the Church brief makes it quite clear
9 that the purpose of MCCS was perhaps to plan in light of
10 past facts, but certainly above all else to plan for the
11 future.

12 That concludes my remarks, Your Honor.

13 THE COURT: Well, I guess I have heard you gentlemen
14 talking for some time and I have had a lot of thoughts
15 about this thing for a long time, and I start up with the
16 proposition that at the trial I was not satisfied there was
17 a waiver and nothing has been submitted to me since that
18 would convince me to change my position that there was not
19 a waiver.

20 As I recall the evidence and the declaration,
21 the tape was given to Mr. Armstrong with the apparent
22 belief that it was blank and he would use it for
23 dictating and for other purposes in the course of the
24 biography project.

25 As far as the crime fraud exception, of
26 course, I accept the California law that you can't look
27 at the conversation itself to make that determination. You
28 have to find other independent evidence. Mr. Flynn had a

1 lot of problem with that at the trial, I remember, and
2 so I operate from that assumption. If I am wrong, I am
3 wrong. But I operate from the assumption I cannot look
4 at what is on the tape to determine whether the crime fraud
5 exception applies.

6 Now, Mr. Armstrong's and Miss Sullivan's
7 declarations. Of course, they testified at the trial and
8 one of the problems that we had in the trial of this was
9 that a lot of information that Miss Sullivan became aware
10 of in this project was information that she became aware
11 of as part of this attorney-client situation. This
12 information that she became aware of and didn't want to
13 take the time or the effort at that time to try to sort it
14 out and try to figure out what perhaps she knew from her
15 previous experiences and that which she acquired as working,
16 in effect, as a legal assistant preparing for the Sort-Out
17 project.

18 I have already indicated I don't have any
19 quarrel with the credibility of Mr. Murphy. I am
20 satisfied that he was acting honestly and in good faith.
21 It brings us down to a problem of where this attorney-
22 client privilege stands and the role of the attorney,
23 while I suppose it has been denigrated in the public media
24 from time to time, it still plays an important role in our
25 society and in the manner in which we deal with the
26 courts and government and so forth. I think that probably
27 on balance that the public policy which favors full and
28 open communication between a client and lawyer has to

1 prevail over the suggestion that there was some secret
2 intent on the part of the person who is communicating with
3 the lawyer.

4 It would be too easy to set aside the
5 privilege if that were the fact, at least in the absence
6 of very strong evidence to that effect.

7 So, I am going to sustain the privilege solely
8 as to what is on that tape. I don't want anybody suggesting
9 that I have gone any further than that. Just as to what is
10 on that tape is concerned, I am finding that privileged.
11 I will sustain the objection.

12 MR. HERTZBERG: You mean both tapes?

13 THE COURT: Is there more than one?

14 MR. HERTZBERG: There are two tapes.

15 THE COURT: Whatever is here. I don't know what is
16 on them other than some reference to partial transcripts,
17 so that is the order.

18 Now, so far as this sealing, which affidavit
19 do you want sealed? Do you want me to order some affidavits
20 in some other litigation are sealed?

21 MR. COPELAND: No, Your Honor. We think that what
22 is here in front of Your Honor is the affidavits that have
23 been filed here. The situation is as follows, and I think
24 it will be very simple to deal with, Your Honor, and I
25 will not revisit any of the arguments that have come up.

26 There is the Armstrong affidavit in which
27 he sets forth the various, what he purports to be

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 57

HON. PAUL G. BRECKENRIDGE, JR., JUDGE

CHURCH OF SCIENTOLOGY OF CALIFORNIA,

Plaintiff,

vs.

GERALD ARMSTRONG,

Defendant.

MARY SUE HUBBARD,

Intervenor.

No. C 420 153

REPORTER'S
CERTIFICATE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ss

I, NANCY L. HARRIS, Official Reporter of the Superior Court of the State of California, for the County of Los Angeles, do hereby certify that the foregoing pages, 1 through 84, comprise a true and correct transcript of the proceedings held in the above-entitled case on February 11, 1985.

Dated this 12th day of February, 1985.

/s/ Nancy L. Harris CSR #644
Official Reporter

EXHIBIT H

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

PEGGY BEAR,

Plaintiff,

against-

CHURCH OF SCIENTOLOGY OF NEW YORK,
CHURCH OF SCIENTOLOGY, MISSION OF EAST
MANHATTAN, CELEBRITY CENTRE, INC., and
CHURCH OF SCIENTOLOGY OF CALIFORNIA,

Defendants.

MEMORANDUM AND
ORDER

81 Civ. 4688 (MJL)

-----X

DONALD BEAR,

Plaintiff,

-against-

CHURCH OF SCIENTOLOGY OF NEW YORK,
CHURCH OF SCIENTOLOGY, MISSION OF EAST
MANHATTAN, CELEBRITY CENTRE, INC.,
CHURCH OF SCIENTOLOGY, MISSION OF
FIFTH AVENUE, and CHURCH OF SCIENTOLOGY
OF CALIFORNIA,

Defendants.

81 Civ. 6864 (MJL)

-----X

MICHAEL H. DOLINGER
UNITED STATES MAGISTRATE:

In the course of extensive briefing of motions for summary judgment, the parties have engaged in a subsidiary dispute concerning the propriety of plaintiffs' filing of certain affidavits. My motions to strike under Fed. R. Civ.

P. 56(e), defendants have challenged the use by plaintiffs of all or part of eleven affidavits, all on the grounds of irrelevance or incompetence and one on the separate ground that it invades the attorney-client privilege of the Church of Scientology of California.* For the reasons that follow, defendants' motion is granted in part and denied in part.

Defendants' Motions to Strike

Defendants have filed two discrete motions to strike. The first motion, filed February 28, 1983, attacks as irrelevant and incompetent in their entirety the affidavits of Kevin M. Flynn, dated February 12, 1982; Steven Garritano, dated February 9, 1982; Carol Garrity, dated February 3, 1982; Janie Peterson, dated February 3, 1982; La Venda Van Schaick, dated February 6, 1982; Thomas M. Greene, undated, and

* Rule 56(e) states in relevant part:

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

(

Michael J. Flynn, dated October 4, 1982, together with all the accompanying documents, and seeks to strike certain paragraphs of the affidavit of Thomas Hoffman, dated February 10, 1982, and its annexed Exhibit K.

Defendants' second motion, filed December 11, 1984, asks the Court to strike, as immaterial and incompetent in their entirety, the affidavits of William Franks, Edward Walter and Gerry Armstrong. In addition, defendants assert that the Armstrong affidavit invades the attorney-client privilege of the California Church because it "sets forth purported partial transcripts of tapes of meetings reflecting privileged communications between Church representatives and attorneys retained to give advice." (See Memorandum in Support of Motion to Strike Affidavits filed December 11, 1984 at 3.)

Governing Standards

Rule 36(e) requires that the affidavits reflect the affiant's personal knowledge and describe evidentiary facts admissible at trial and that the affiant be competent to testify to the matters set forth in the affidavit. See, e.g.,

Chandler v. Coughlin, 763 F.2d 110, 113-14 (2d Cir. 1985); Perma Research and Development Co. v. Singer Co., 410 F.2d 572, 578 (2d Cir. 1969). If an affidavit contains material that does not conform to the requirements of Rule 56(e), it is subject to a motion to strike. See, e.g., id. at 578-79. Nonetheless, such relief is not mandatory since the court may simply disregard those affidavits or portions of affidavits that are not consistent with Rule 56(e). See, e.g., Chambliss v. Masters, Mates & Pilots Pension Plan, 571 F. Supp. 1430, 1459 (S.D.N.Y. 1983). That approach has been followed in the accompanying Report and Recommendation, which deals with defendants' summary judgment motions, and accordingly defendants' motion to strike for irrelevance and incompetence is denied. Their separate challenge to the Armstrong affidavit, based on invocation of the attorney-client privilege, requires a more extended discussion, however, since a determination must be made whether to require that the affidavit be sealed or otherwise removed from the public record.

The Armstrong affidavit reports the substance of, and purports to quote from, discussions between officials of the California Church of Scientology and its attorneys.

Plaintiffs apparently do not deny that the privilege attaches to these conversations between Scientology officials and their attorneys, but rather assert that the privilege has been vitiated because the conversations embodied in the Armstrong affidavit "were in furtherance of criminal and fraudulent activities" (see Memorandum of Points and Authorities in Opposition to Defendants' Motion at 3), or, in the alternative, that the Church has waived its confidentiality claim. (See id. at 4.) These claims are without basis.*

The federal courts have long held "that communications that otherwise would be protected by the attorney-client privilege. . .are not protected if they relate to client communications in furtherance of contemplated or ongoing criminal or fraudulent conduct." In re Grand Jury Subpoena Duces Tecum Dated September 13, 1983, 731 F.2d 1032, 1038 (2d

* The Armstrong affidavit was originally submitted in support of both state and federal claims asserted by the plaintiffs. Since plaintiffs have dismissed their RICO claims, the only remaining causes of action are based on state tort law. Fairly construed, however, the challenged passages of the affidavit address not only these state law claims, but also the First Amendment religious defense asserted by defendants. Under these circumstances, Fed. R. Evid. 501 is properly interpreted as requiring resort to federal rather than state law for a definition of the scope and applicability of the attorney-client privilege. See, e.g., First Federal Savings & Loan Ass'n of Pittsburgh v. Oppenheim, Appel, Dixon & Co., 110 F.R.D. 557, 560 (S.D.N.Y. 1986) (citing cases).

Cir. 1984) (citing cases). To pierce the privilege on this basis, the movant bears the burden of establishing probable cause to believe that the client has committed or intended to commit a fraud and that the otherwise protected communications were in furtherance of that fraud. See, e.g., id. at 1039; In re John Doe Corp., 675 F.2d 482, 491 & n. 7 (2d Cir. 1982). As explained by the Second Circuit, the evidence must be sufficient for "a prudent person [to] have a reasonable basis to suspect the perpetration of a . . . fraud, and that the communications were in furtherance thereof." In re Grand Jury Subpoena Duces Tecum Dated September 15, 1983, supra, 731 F.2d at 1039.

Judged by this standard, plaintiffs' showing is inadequate to demonstrate that the conversations in question were in furtherance of a fraud.* The conversations reflect an effort to establish a clear and definitive relationship among

* Since the test is "probable cause" or, alternatively, a "prima facie showing," see In re Grand Jury Subpoena Duces Tecum Dated September 15, 1983, supra, 731 F.2d at 1039, I do not rely on defendants' responding affidavits.

the various Scientology corporations, and between those corporations and L. Ron Hubbard, presumably for the purpose of minimizing the exposure of Hubbard and some of the corporations for the debts and other liabilities of other corporate entities. This type of endeavor is a common task of corporate counsel and is not in itself fraudulent. There is no significant evidence in the record of this case to suggest that the restructuring project referred to by Armstrong involved the intended commission of a fraud, or that the particular communications at issue were in furtherance of that fraud.

Plaintiffs also seek to pierce the privilege based upon the claim that defendants waived it on three separate occasions. First, plaintiffs claim that the conversations in question were tape recorded and that the custodian of the tapes voluntarily gave them to Mr. Armstrong, who was charged with preparing a biography of L. Ron Hubbard. (See Plaintiffs' Points and Authorities in Opposition at 4.) Second, plaintiffs assert that defendants waived the privilege because, in an unrelated Florida lawsuit, the Church of Scientology of California failed to object to the submission of an affidavit containing a portion of the confidential

communications. (See id. at 5.) Finally, plaintiffs state that personal representatives and attorneys of L. Ron Hubbard and an entity known as Golden Era Studios participated in one of the discussions at issue, and they argue that this participation waived the privilege. None of these arguments is sustainable. (See id. at 6.)

Plaintiffs' first waiver theory must fail for two reasons. First, disclosure can constitute waiver only if made by a person who holds the privilege or is otherwise authorized to waive it. See, e.g., Velsicol Chemical Corp. v. Parsons, 561 F.2d 671, 674-75 (7th Cir. 1977), cert. denied, 435 U.S. 942 (1978); Schnell v. Schnell, 550 F. Supp. 650, 653 (S.D.N.Y. 1982). In this case Armstrong apparently obtained the tapes from a secretary employed by the Church of Scientology (see Affidavit of Edward Copeland, sworn to January, 1985, at Exh. B, ¶¶ 47-51), and plaintiffs -- who bear the burden of proving waiver* -- neither assert nor suggest that she was authorized by the Church to waive its

* See, e.g., In re Horowitz, 482 F.2d 72, 80 (2d Cir.), cert. denied, 414 U.S. 867 (1973).

privilege or that defendants were in a position to prevent the disclosure. See, e.g., 2 J. Weinstein & M. Berger, Weinstein's Evidence ¶ 512[02] at 512-4 (1986). Second, it appears from the affidavits that Armstrong was given the tapes in the mistaken belief that they were blank, so that he could use them to record material for his biography project. (See Copeland Aff., at Exh. B, ¶¶ 47-51) (See also Declaration of Edward Copeland, Esq., executed December, 1984, at Exh. B). The evidence suggests, therefore, that the disclosure was inadvertent, and under those circumstances there is no basis for implying a waiver of the privilege. See, e.g., Lois Sportswear, U.S.A., Inc. v. Levi Strauss & Co., 104 F.R.D. 103, 105 (S.D.N.Y. 1985); Mendenhall v. Barber-Greene Co., 531 F. Supp. 951, 954-55 (N.D. Ill. 1982).

Plaintiffs' second theory of waiver is equally unavailing. The disputed affidavit was filed in a Florida action in opposition to a motion to dismiss by Mr. and Mrs. Hubbard, whose privilege is also implicated in the disclosure, and the Hubbards timely filed a motion to strike grounded based on their attorney-client privilege. (See Affidavit of Lawrence E. Fuentes, sworn to January 25, 1985, at ¶ 3.) The Florida motions are apparently still pending and -- as of the

time the last affidavits in this case were filed -- had not been fully briefed because the Florida court had yet to rule on the permissible length of the briefs. (Id. at ¶ 4.) Thus the Church of Scientology of California has not yet lost the opportunity to join in the motion to strike, and in fact its Florida attorney represents, without contradiction, that it has been waiting for a ruling on the permissible length of briefs before filing papers in support of its own privilege claim. (Id. at ¶ 5.) Under these circumstances, it cannot be said that the Church has waived the privilege by failing to assert it in the Florida proceeding.

As for plaintiffs' third theory of waiver, the presence of another individuals at conversations between a client and his attorney does not vitiate the privilege if the other person has a common interest that is being furthered by the communication or if that person's presence is for the purpose of assisting the attorney in rendering legal services. See Weinstein's Evidence, supra, ¶ 503(b)[06] at 503-59 to 60 &

nn. 4-5 (citing cases).^{*} The record in this case indicates that Golden Era Studios was a part of the Church of Scientology of California and that the California Church and L. Ron Hubbard were jointly concerned in the matters under discussion. (See Armstrong Affidavit at ¶ 9; Affidavit of Stanley Doyle, Esq., sworn to January 28, 1985 at ¶ 2; Declaration of James M. A. Murphy, Esq., executed January 21, 1985, at ¶ 6.) Under these circumstances, plaintiffs have failed to demonstrate a waiver of the privilege.

CONCLUSION

Because plaintiffs have failed to demonstrate either an exception to or a waiver of the attorney-client privilege of the California Church, I find that the affidavit of Gerry

* Although the "joint interest" principle is normally applied in litigation or pre-litigation situations, Judge Weinstein persuasively suggests that it should also apply in non-litigation contexts. Weinstein's Evidence, supra, ¶ 503(b)[06] at 503-59.

Armstrong, sworn to July 26, 1982, discloses privileged information, and accordingly must be placed under seal. Moreover, those portions of the affidavit that disclose privileged communications -- specifically, paragraphs 6, 7 and 9 -- must be disregarded because they rely upon non-waived privileged communications.

DATED: New York, New York
December 5, 1986

SO ORDERED.

MICHAEL H. DOLINGER
UNITED STATES MAGISTRATE

Copies of the foregoing Memorandum and Order have been mailed this date to:

Michael Flynn, Esq.
12 Union Wharf
Boston, Massachusetts 02109

Harry M. Lipsig, Esq.
Lipsig, Sullivan & Liapakis, P.C.
100 Church Street
New York, New York 10007

Sanford M. Katz, Esq.
Katz & Weinstein, Esqs.
36 West 44th Street
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Eric M. Lieberman, Esq.
Rabinowitz, Boudin, Standard,
Krinsky & Lieberman, P.C.
740 Broadway
Fifth Floor
New York, New York 10003-9518

EXHIBIT I

RECEIVED

MAY 02 1985

Att'd.....

FILED

APR 30 1985

CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY *ELM* DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Petitioner,

vs.

FRANK S. ZOLIN, CLERK
OF THE SUPERIOR COURT,

Respondent.

CHURCH OF SCIENTOLOGY
OF CALIFORNIA,

Intervenor.

NO. CV 85-0440-HLH

ORDER

40

The Court makes the following Orders and Findings:

1. Reconsideration is denied as to Exhibits 5G and 5I; the Order of March 12, 1985 will stand.

2. Intervenor Church has failed to raise any doubt of the good faith of the Internal Revenue Service in pursuing this summons enforcement proceeding. Specifically, it is found that a bona fide criminal tax investigation of T. Ron Hubbard is being conducted by the IRS for the years 1979-83, that the matter has not been

1 referred to the Department of Justice for prosecution, that the
2 summons was validly issued pursuant to that investigation, that
3 the agent issuing the summons was in good faith in doing so, and
4 did not do so for an improper purpose, or to harass the taxpayer,
5 or for a collateral purpose. No further discovery on this issue
6 is warranted.

7 3. With the exception of Exhibits 6B and 5C (the "MCCS
8 tapes"), the Court finds that all potentially applicable privi-
9 leges (attorney-client, marital) have been waived by voluntary
10 delivery of the material to Gerald Armstrong. In addition, no
11 privilege has been validly asserted by the holder of a potential
12 privilege as to certain items (Exhibits 5L and 5P).

13 4. Sufficient relevancy being shown, the IRS is entitled
14 to inspect and copy Exhibits 5K, 5L, 5O, 5P and 6O, and the
15 summons is to be enforced as to those items.

16 5. No relevancy or waiver has been shown for Exhibit 6B,
17 and it need not be produced.

18 6. As to Exhibit 5C (the "MCCS tapes"), the Court finds:

19 (a) The tapes consist of confidential communications
20 between attorneys and clients or clients' authorized agents.

21 (b) The confidential communications were between
22 clients and their attorneys who had a common interest; the privi-
23 lege was, therefore, not destroyed by publication of the communi-
24 cation to an outsider.

25 (c) There was no waiver of the privilege by delivery
26 to an outsider, the Court finding that the tapes were delivered to
27 Gerald Armstrong by mistake, and, in addition, that Petitioner has
28 not carried the burden of showing waiver.

1 (d) The "fraud-crime" exception to the attorney-
2 client privilege does not apply. The quoted excerpts tend to
3 show or admit past fraud but there is no clear indication that
4 future fraud or crime is being planned.

5 (e) The Order sealing the Petersell affidavit (filed
6 March 15, 1985) quoting excerpts from the tapes will remain sealed.

7 (f) This Court's copy of the tapes will remain sealed
8 in possession of the Court's Clerk until after any appellate
9 review of this Order, after which it is to be returned to the
10 Superior Court. The Clerk of the Superior Court need not produce
11 its copy of the tapes pursuant to the summons.

12 7. The documents delivered hereunder shall not be deliv-
13 ered to any other government agency by the IRS unless criminal
14 tax prosecution is sought or an Order of Court is obtained.

15 Petitioner is to prepare an Order in accord with this
16 Order and the Order of March 12, 1985. This Order is stayed for
17 sixty (60) days, and thereafter if an appeal or application for
18 a writ is filed and until decision on appeal or writ application
19 is rendered.

20 IT IS SO ORDERED.

21 DATED: April 30, 1985.

22
23 
HARRY L. HUPP
United States District Judge

24 A copy of this Order mailed to:
25 Charles H. Magnuson, Asst. U.S. Attorney
26 Donald C. Randolph, Esq.
27 Gordon Trask, County Counsel
28

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT. 56

DATE 11/09/88

HONORABLE BRUCE R. GEERNAERT

JUDGE

M. FITZGERALD

DEPUTY CLERK

HONORABLE

JUDGE PROTEM

NONE

Deputy Sheriff

M. PETTIT

Reporter

(Parties and counsel checked if present)

3:00 am C420153

Church of Scientology of Calif.
vs.
Gerald Armstrong,

Counsel for
Plaintiff

BOWLES & MOXON

BY; TIMOTHY BOWLES

Counsel for
Defendant

MICHAEL LEE HERTZBERG
SAYRE, MORENO, PURCELL &
BOUCHER

BY; TOBY L. PLEVIN

PAUL MORANTZ

NATURE OF PROCEEDINGS.

MOTION OF BENT CORYDON TO UNSEAL FILE

AND

JOINDER IN MOTION TO UNSEAL FILE

Motion is granted. The file is ordered unsealed for the reasons and on the grounds set forth in the Moving Papers and as reflected in the notes of the Official Court Reporter.

Execution of this order (i.e., unsealing by the County Clerk) is stayed to December 9, 1988.

Notice waived.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 56

HON. BRUCE R. GEERNAERT, JUDGE

CHURCH OF SCIENTOLOGY OF CALIFORNIA,

PLAINTIFF,

VS.

GERALD ARMSTRONG,

DEFENDANT.

NO. C 420 153

REPORTER'S TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, NOVEMBER 30, 1988

APPEARANCES:

FOR CHURCH OF SCIENTOLOGY
OF CALIFORNIA:

BOWLES & MOXON
BY: HENDRICK MOXON
6255 SUNSET BOULEVARD,
SUITE 2000
HOLLYWOOD, CALIFORNIA 90028
(213) 661-4030

FOR MARY SUE HUBBARD:

RABINOWITZ, BOUDIN, STANDARD,
KRINSKY & LIEBERMAN
BY: ERIC LIEBERMAN
740 BROADWAY, FIFTH FLOOR
NEW YORK, NEW YORK 10003-9518
(212) 982-9870

FOR MARY AND BENT CORYDON:

TOBY L. PLEVIN
10866 WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90024
(213) 475-0505

FOR BENT CORYDON:

PAUL MARANTZ
P.O. BOX 511
PACIFIC PALISADES, CALIFORNIA 90272
(213) 459-4745

ORIGINAL

MICHAEL W. PETTIT, CSR #2053
OFFICIAL REPORTER

1 LOS ANGELES, CALIFORNIA; WEDNESDAY, NOVEMBER 30, 1988 9:37 A.M.

2 DEPARTMENT NO. 56

HON. BRUCE R. GEERNAERT, JUDGE

3 (APPEARANCES AS HERETOFORE NOTED.)

4
5 - - 0 - -
6

7 THE COURT: THE MATTER OF CHURCH OF SCIENTOLOGY
8 VERSUS GERALD ARMSTRONG, CASE NO. C 420 153.

9 MR. LIEBERMAN: ERIC LIEBERMAN FOR THE CHURCH OF
10 SCIENTOLOGY, YOUR HONOR.

11 MR. MOXON: KENDRICK MOXON FOR THE CHURCH OF
12 SCIENTOLOGY.

13 MS. PLEVIN: TOBY PLEVIN FOR MARY AND BENT CORYDON.

14 MR. MORANTZ: PAUL MORANTZ FOR BENT CORYDON.

15 THE COURT: ALL RIGHT. NOW, THIS IS A MOTION FOR
16 RECONSIDERATION OR CLARIFICATION OF THE COURT'S EARLIER
17 ORDER. THE DATE WAS --

18 MS. PLEVIN: NOVEMBER 9TH, I BELIEVE, YOUR HONOR.

19 THE COURT: AND THERE'S OPPOSITION TO THE MOTION, BUT
20 IT'S ON THE HEADING OF A DIFFERENT CASE.

21 MR. MORANTZ: I FILED A SUBSTITUTE PAGE. I BROUGHT A
22 SUBSTITUTE PAGE TO THE COURT'S CLERK TO REPLACE THAT BECAUSE
23 MY SECRETARY PUT THE WRONG CAPTION ON THAT.

24 THE COURT: IT IS APPROPRIATE THAT IT HAVE ANOTHER
25 PAGE.

26 NOW, I'VE READ ALL THE PAPERS, AND THERE'S AN
27 ISSUE RAISED HERE THAT WASN'T COVERED IN THE PRIOR ORDER,
28 AND THAT IS THE ATTORNEY-CLIENT PRIVILEGE WHICH HAS BEEN

1 LITIGATED WITH REGARD TO EXHIBIT 500-5 C'S, WHICH IS TWO
2 AUDIO TAPES. I GUESS THEY ARE AUDIO.

3 MR. LIEBERMAN: YES, YOUR HONOR, AUDIO TAPES.

4 THE COURT: AND I DIDN'T INTEND TO INFRINGE UPON
5 THAT, OBVIOUSLY. MAYBE IT'S NOT SO OBVIOUS, BUT THAT'S BEEN
6 THE SUBJECT OF A LOT OF LITIGATION, A LOT OF JUDICIAL
7 ATTENTION NOW PENDING BEFORE THE UNITED STATES SUPREME
8 COURT, SO I WANT TO MAKE IT CLEAR THAT MY ORDER IS NOT
9 INTENDED TO, AND I WILL CLARIFY IT, THAT IT DOES NOT INVOLVE
10 EXHIBIT 500-5 C'S. THE PRESENT ORDER RELATES TO DOCUMENTS
11 SEALED BY THE GENERAL ORDER AT THE TIME OF THE SETTLEMENT.

12 NOW, NO OTHER ORDER HAS BEEN IDENTIFIED. IN
13 THE MOVING PAPERS YOU TALK PRIMARILY ABOUT 5 C'S, AND THEN
14 ON PAGE 3, PARAGRAPH 4 YOU SAY, "THERE ARE FIVE OTHER
15 DOCUMENTS PRESENTLY RESTING IN THE COURT'S FILES WHICH ALSO
16 WERE NEVER ENTERED INTO EVIDENCE OR THE PUBLIC FILE IN THIS
17 CASE AND WHICH HAVE REMAINED SEALED THROUGHOUT THE HISTORY
18 OF THIS CASE. THESE DOCUMENTS ARE EXHIBITS 500" -- THERE'S
19 NO ARGUMENT ABOUT THOSE, NO EVIDENCE PRESENTED ABOUT THOSE,
20 AND THERE'S EVIDENTLY NEVER BEEN A SPECIFIC ORDER WITH
21 REGARD TO THEM.

22 MR. LIEBERMAN: LET ME TRY AND CLARIFY THAT, YOUR
23 HONOR. THOSE FIVE DOCUMENTS ALSO WERE THE SUBJECT OF THE
24 ORIGINAL SEALING ORDER IN THIS CASE WHEN THE DOCUMENTS WERE
25 DEPOSITED FOR SAFEKEEPING WITH THE CLERK OF THE COURT.
26 THEY, TOO, WERE NEVER ENTERED INTO EVIDENCE.

27 THE COURT: LET ME INTERRUPT YOU, BECAUSE WHETHER
28 SOMETHING'S ENTERED IN EVIDENCE OR NOT HAS NOTHING TO DO

1 WITH ANYTHING RELATING TO THIS MOTION. YOUR ARGUMENT ON
2 THAT IS JUST OFF ABOUT FIVE DEGREES. YOU CAN HAVE SOMETHING
3 IN EVIDENCE OR YOU CAN HAVE SOMETHING NOT IN EVIDENCE AND IT
4 DOES OR DOES NOT FALL WITHIN THE ATTORNEY-CLIENT PRIVILEGE.
5 SOME PRIVILEGE AGAINST DISCLOSURE IS WHAT YOU NEED, NOT
6 WHETHER IT WAS EVER PUT IN EVIDENCE OR RECEIVED IN EVIDENCE.

7 MR. LIEBERMAN: I UNDERSTAND, YOUR HONOR. JUDGE
8 COLE, WHEN HE ORIGINALLY ISSUED THE TEMPORARY RESTRAINING
9 ORDER, PROTECTED THESE DOCUMENTS ON THE BASIS OF A
10 GENERALIZED PRIVACY CLAIM WHICH WAS THE BASIS FOR THE
11 UNDERLYING LAWSUIT. AT THE CONCLUSION OF THE TRIAL HERE
12 JUDGE BRECKENRIDGE NOT ONLY EXCLUDED THESE FIVE DOCUMENTS
13 FROM EVIDENCE BUT HE ALSO EXPLICITLY MAINTAINED THAT SEAL ON
14 THOSE FIVE DOCUMENTS.

15 THE COURT: WHERE?

16 MR. MOXON: PAGE 2.

17 MR. LIEBERMAN: PAGE 2, FOOTNOTE 1 OF THE MEMORANDUM
18 OF INTENDED DECISION, YOUR HONOR.

19 THE COURT: THIS COPY IS A LITTLE HARD TO READ. I
20 GUESS I CAN READ IT. WHAT IS IT, FOOTNOTE 1?

21 MR. LIEBERMAN: I BELIEVE THAT'S CORRECT, YOUR HONOR.

22 THE COURT: IT RELATES TO THE SECOND PARAGRAPH?

23 MR. LIEBERMAN: AT THE BOTTOM OF THE PAGE. IT'S
24 EXHIBIT A, I BELIEVE. YES, EXHIBIT A OF THE ORIGINAL MOVING
25 PAPERS BY MR. CORYDON.

26 THE COURT: WELL, I HAVE IT. IT'S IN THE FILE, AND
27 I'M LOOKING AT THE ONE IN THE FILE.

28 MR. LIEBERMAN: IT'S ACTUALLY IN THE BODY PLUS IN THE

1 FOOTNOTE, YOUR HONOR. THE FIRST FULL PARAGRAPH ON PAGE 2.

2 THE COURT: JUST ONE MOMENT, PLEASE.

3 MR. LIEBERMAN: I'M SORRY.

4 (PAUSE.)

5 THE COURT: BUT WHAT I INTENDED BY MY OTHER ORDER WAS
6 NOT TO AFFECT ANYTHING THAT WASN'T BROUGHT INTO BEING AT THE
7 TIME OF THIS MEMORANDUM OF INTENDED DECISION, AND OBVIOUSLY
8 JUDGE BRECKENRIDGE INTENDED THAT HIS ORDER SEALING
9 EVERYTHING ELSE WAS OVER AND ABOVE AND IN ADDITION TO THE
10 MATTERS ALREADY SEALED. SO I GUESS I'M GOING TO NOW CLARIFY
11 AND REMOVE THESE, BUT IT'S WITHOUT PREJUDICE TO A SPECIFIC
12 MOTION WITH REGARD TO THESE.

13 MR. MORANTZ: YOUR HONOR, MAY I ADDRESS THE COURT?

14 THE COURT: YES.

15 MR. MORANTZ: BEFORE THE COURT MAKES THAT DECISION, I
16 REALIZE THAT WE HAVE NOT HAD THE BENEFIT OF REVIEWING THE
17 FILE, AS COUNSEL HAS POSSESSION OF THE FILE, SO ALL THAT I
18 HAVE IS WHAT COUNSEL HAVE GIVEN US, THE MOVING PAPERS, AND
19 IN THE MOVING PAPERS BY THE MOVING PARTY -- I'M REFERRING TO
20 THE MOTION FOR RECONSIDERATION BEFORE THE COURT TODAY. AND
21 IT ATTACHES A MINUTE ORDER OF 2-11-85 OF JUDGE BRECKENRIDGE,
22 AND THE UNITED STATES GOVERNMENT MADE THE SAME REQUEST THAT
23 WE'RE MAKING AS TO THE VERY SAME DOCUMENTS THAT COUNSEL
24 SEEKS TO HAVE REMAIN UNDER SEAL. AND UNDER THE -- I THINK
25 IT'S THE THIRD PARAGRAPH THEREOF, IT SAYS SPECIFICALLY THAT
26 THE MOTION IS GRANTED IN FAVOR OF THE UNITED STATES
27 GOVERNMENT TO GET THOSE DOCUMENTS, AS TO THESE VERY
28 EXHIBITS, AND THE COURT WAS MAKING SPECIFIC FINDINGS OF A

1 WAIVER OF A PRIVILEGE, AND IN SOME CASES THAT THE PRIVILEGE
2 DID NOT EVEN APPLY. SO THESE DOCUMENTS HAVE NOW BEEN
3 RELEASED TO THE UNITED STATES GOVERNMENT, AND AS SUCH THEY
4 ARE OUT THERE IN THE PUBLIC DOMAIN, NOT SUBJECT ANYMORE TO
5 ANY --

6 THE COURT: WE CAN ADDRESS THIS RIGHT NOW. I WAS
7 GOING TO PUT IT OVER, BUT I GUESS THE MOTION THAT I RULED ON
8 ON NOVEMBER 9TH WAS BROAD ENOUGH TO COVER THESE FIVE
9 DOCUMENTS ALSO. SO LET'S JUST GO TO THE MERITS OF IT. WHY
10 SHOULDN'T THESE BE UNSEALED?

11 MR. LIEBERMAN: LET ME ADDRESS THAT, YOUR HONOR.
12 CONTRARY TO MR. MORANTZ' REPRESENTATION OF WHAT HAPPENED
13 THERE, YOU'LL NOTE THAT THE MINUTE ORDER SAYS, "SUBJECT TO
14 PROTECTIVE ORDER." NOW, WHAT HAPPENED IN THAT CASE --

15 THE COURT: SEE, EVERYBODY CHARACTERIZES DOCUMENTS,
16 AND THEY DON'T REFER TO THEM, AND I WOULD LIKE TO READ THE
17 ORDER THAT IS BEING REFERRED TO. IS THAT IN THE FILE HERE?

18 MR. LIEBERMAN: THE MINUTE ORDER IS ATTACHED TO --

19 THE COURT: NO. BUT WASN'T THERE A REGULAR ORDER?

20 MR. LIEBERMAN: YES, THERE IS A REGULAR ORDER WHICH I
21 HAVE RIGHT HERE.

22 THE COURT: SHOW IT TO MR. MORANTZ AND THEN HAND IT
23 TO THE CLERK.

24 MR. LIEBERMAN: ALL RIGHT (HANDING). AND I CAN HAND
25 ONE UP TO THE COURT.

26 THE COURT: OKAY. THANK YOU.

27 MR. MORANTZ: YOUR HONOR, WHAT THIS SAYS IS THAT THE
28 UNITED STATES WAS AWARDED THE DOCUMENTS, BUT THEY WERE ONLY

1 ABLE TO USE THEM IN LITIGATION AND NOT TO GIVE THEM TO ANY
2 OTHER THIRD PARTIES WITHOUT COURT APPROVAL. IT'S STILL
3 DISCLOSED.

4 THE COURT: LET ME READ THIS.

5 (PAUSE.)

6 THE COURT: THIS REALLY DOESN'T ASSIST ME IN DECIDING
7 ANY MERIT ON KEEPING THESE SEALED.

8 MR. LIEBERMAN: WELL, YOUR HONOR, LET ME BACK UP A
9 MINUTE. WHAT WE HAVE AS A RESULT OF THIS ORDER IS WE HAVE
10 THE ORIGINAL SEALING ORDER BY JUDGE COLE.

11 THE COURT: LET ME SEE THAT, IF YOU WOULD. I MEAN
12 THE RECORD SHOULD SHOW THAT THIS FILE INVOLVES SOME 28 OR 29
13 VOLUMES, AND SO JUST TO CHARACTERIZE AN ORDER PUTS A
14 TERRIBLE BURDEN ON THE COURT UNLESS YOU GIVE ME A COPY OF
15 IT.

16 MR. LIEBERMAN: I UNDERSTAND THAT, YOUR HONOR.

17 THE COURT: BUT THAT'S WHAT YOU DO IN YOUR PAPERS;
18 YOU JUST SAY WHAT THE ORDERS SAY WITHOUT EVEN GIVING THE
19 DATES OF THEM.

20 MR. MOXON: I'VE GOT IT HERE, YOUR HONOR, IF I MAY
21 BRING THIS UP. I'LL TAKE IT OUT OF THIS BINDER (HANDING).

22 THE COURT: ALL RIGHT. THANK YOU. NOW, THIS ORDER
23 DESCRIBES DOCUMENTS TO BE TURNED OVER TO THE CLERK AND TO
24 REMAIN IN THE POSSESSION OF THE CLERK TO BE VIEWED BY THE
25 ATTORNEYS OF RECORD OF THE PARTIES LIMITED HERETO. AND THE
26 DESCRIPTION OF THE DOCUMENTS -- THEY ARE NOT CONFIDENTIAL
27 DOCUMENTS. I MEAN WHETHER THEY ARE CONFIDENTIAL OR NOT,
28 THEY ARE NOT PRIVILEGED DOCUMENTS. I MEAN THEY ARE

1 LETTERS -- WELL, IT'S DESCRIBED AS, "DOCUMENTS AND MATERIALS
2 PROVIDED TO THEM AT ANY TIME BY DEFENDANT ARMSTRONG
3 PERTAINING TO THE CHURCH OF SCIENTOLOGY AS ABOVE REFERENCED
4 IN THE PRECEDING PARAGRAPH OF THIS ORDER AND SPECIFICALLY
5 INCLUDING," AND THEN IT DESCRIBES LETTERS FROM RON L.
6 HUBBARD AND CORRESPONDENCE BETWEEN HUBBARD AND DON PURCELL
7 AND LETTERS AND OTHER DOCUMENTS CONCERNING THE HUBBARD
8 EXPLORATION COMPANY AND OTHERS, BUT THERE'S NOTHING ABOUT
9 THIS ORDER THAT WOULD ALLOW ME AT LEAST TO CONCLUDE THAT
10 THEY SHOULD REMAIN SEALED AT THIS TIME.

11 MR. LIEBERMAN: WELL, LET ME TRY AND EXPLAIN WHY I
12 THINK YOUR HONOR SHOULD DO THAT. THE BASIS OF THIS LAWSUIT
13 BY BOTH THE CHURCH AND BY MRS. HUBBARD WAS TO PROTECT
14 PRIVATE INTERESTS IN THESE DOCUMENTS. THESE WERE PRIVATE
15 DOCUMENTS THAT INCLUDED LETTERS, DIARIES, ET CETERA.

16 THE COURT: PRIVACY GIVES WAY TO DISCOVERY IN
17 LITIGATION.

18 MR. LIEBERMAN: I AGREE WITH YOU, YOUR HONOR.
19 HOWEVER, THERE WAS ALSO A PRELIMINARY INJUNCTION ISSUED
20 SUBSEQUENT --

21 THE COURT: THAT'S NOT AN ABSOLUTE STATEMENT, BUT IT
22 GIVES WAY EXCEPT IN UNUSUAL CIRCUMSTANCES.

23 MR. LIEBERMAN: WELL, BUT IT GIVES WAY, YOUR HONOR,
24 WHEN IT IS RELEVANT TO OUTSTANDING LITIGATION.

25 THE COURT: NO. IT'S EVEN BROADER THAN "RELEVANT."
26 IT'S "RELEVANT" OR "MIGHT LEAD TO RELEVANCE."

27 MR. LIEBERMAN: THAT'S RIGHT. THAT'S RIGHT. NOW,
28 WHAT JUDGE BRECKENRIDGE DID HERE WAS THAT HE SEALED THESE

1 DOCUMENTS ON THE BASIS OF PRIVACY AND ALLOWED PARTIES TO
2 COME IN AND MAKE A SHOWING THAT THEY ARE RELEVANT TO
3 OUTSTANDING LITIGATION. WHAT THE UNITED STATES DID IN THIS
4 MINUTE ORDER OF FEBRUARY 25TH IS IT CAME IN AND IT ASKED FOR
5 ABOUT 15 DOCUMENTS, AS YOU SEE FROM THE ORDER. HE DENIED
6 MOST OF THEM ON THE BASIS OF EITHER PRIVILEGE OR RELEVANCE
7 AND GRANTED FIVE OF THEM PURSUANT TO A PROTECTIVE ORDER.
8 THE REASON THE PROTECTIVE ORDER WAS GRANTED WAS PRECISELY
9 BECAUSE THESE DOCUMENTS CONSTITUTED THE SUBJECT MATTER OF
10 THE LITIGATION AND HAD BEEN FOUND BY JUDGE BRECKENRIDGE TO
11 BE PRIVATE AND ENTITLED TO PROTECTION EXCEPT WHERE A
12 COMPELLING --

13 THE COURT: I DON'T SEE THAT KIND OF A FINDING BY
14 JUDGE BRECKENRIDGE. I DON'T SEE ANYTHING LIKE THAT. AND I
15 WONDER WHAT THE BASIS WOULD BE FOR IT. BASED ON THE HISTORY
16 OF THIS FILE, I DON'T SEE A BASIS FOR DETERMINING THAT THE
17 DOCUMENTS PRODUCED PURSUANT TO JUDGE COLE'S ORDER ARE ANY
18 DIFFERENT THAN ANY OTHER LITIGANT'S DOCUMENTS THAT THEY HAVE
19 IN THEIR POSSESSION AND THAT WOULD HAVE TO BE PRODUCED IF
20 THEY WERE INVOLVED IN A LAWSUIT IF THEY WERE EITHER RELEVANT
21 OR POSSIBLY RELEVANT TO THE ISSUES IN A CASE.

22 MR. LIEBERMAN: YES. BUT SOMEBODY WOULD HAVE TO MAKE
23 A REQUEST FOR DISCOVERY. WE WOULD HAVE THE RIGHT TO OPPOSE
24 IT ON THE BASIS OF IRRELEVANCE AND PRIVACY. THEY WOULD HAVE
25 TO MAKE A DEMONSTRATION.

26 THE COURT: BUT YOU'RE NOT SAYING THESE ARE
27 IRRELEVANT.

28 MR. LIEBERMAN: THEY HAVE NOT SHOWN ANY RELEVANCE,

1 YOUR HONOR. THEIR MOVING PAPERS -- LET ME MAKE THIS POINT,
2 THEIR MOVING PAPERS SAID THEY WANT THE RECORD OF THE TRIAL
3 IN THIS CASE AND THE EXHIBITS. THESE DOCUMENTS ARE NOT PART
4 OF THE RECORD OF THE TRIAL IN THIS CASE OR THE EXHIBITS.
5 THEY SAID THEY NEED THOSE BECAUSE THEY NEED TO DETERMINE
6 WHAT WAS DECIDED BY JUDGE BRECKENRIDGE.

7 THE COURT: REALISTICALLY, HOW ARE THEY GOING TO
8 DETERMINE WHETHER THEY ARE RELEVANT UNLESS THEY ARE
9 UNSEALED?

10 MR. LIEBERMAN: WELL, YOUR HONOR, PARTIES ARE NOT
11 ALLOWED TO RUMMAGE THROUGH SOMEBODY'S STACK OF DOCUMENTS AND
12 SAY, "WE WANT TO SEE IF THERE'S ANYTHING RELEVANT THERE."

13 THE COURT: YOU'RE RIGHT. SO I THINK THE WAY TO DO
14 THIS IS I'M GOING TO EXCLUDE THESE DOCUMENTS WITHOUT
15 PREJUDICE THAT TO THE EXTENT THAT ANY OF YOUR PROPER
16 DISCOVERY REQUESTS CALL FOR THE PRODUCTION OF THESE
17 DOCUMENTS THAT THE CHURCH WILL BE REQUIRED TO SO INDICATE,
18 IN WHICH CASE YOU CAN MAKE A MOTION TO HAVE IT UNSEALED.
19 BECAUSE THEY WOULD THEN BE SAYING EXCEPT FOR THE SEALING
20 HERE, WE WOULD BE DISCLOSING THESE DOCUMENTS. BECAUSE I
21 THINK COUNSEL'S RIGHT HERE.

22 MR. MORANTZ: MAY I ADDRESS THE COURT ON THAT?

23 THE COURT: ALL RIGHT.

24 MR. MORANTZ: THE PROBLEM WITH THAT IS THAT WE'RE
25 LEFT TO --

26 THE COURT: LET ME POINT OUT I REALIZE THAT IN THIS
27 CASE THEY BETTER BE CAREFUL, BECAUSE ULTIMATELY YOU MAY MAKE
28 A MOTION AND THERE MAY BE A SECOND-GUESSING BY THIS COURT AS

1 TO WHETHER OR NOT THEY HAVE BEEN CANDID WITH YOU IN THEIR
2 RESPONSES TO YOUR DISCOVERY REQUESTS.

3 MR. MORANTZ: YOUR HONOR, I WANT TO HAVE -- IF I MAY
4 APPROACH -- THE OPPORTUNITY TO EXPLAIN TO THE COURT WHY I
5 BELIEVE THE COURT SHOULD NOT MAKE THE ORDER THAT IT IS NOW
6 SUGGESTING, IF I MAY.

7 THE COURT: ALL RIGHT.

8 MR. MORANTZ: TO COMMENCE WITH, WE HAVE ATTACHED THE
9 DECLARATION OF A FORMER TOP SCIENTOLOGY OFFICIAL, VICKI
10 ASNARAN, INDICATING THAT DURING THE ACTUAL TRIAL OF THIS
11 CASE THE DISCOVERY REQUEST OF SCIENTOLOGY WAS DISOBEYED --
12 THAT SCIENTOLOGY WOULD DESTROY DOCUMENTS THAT WERE ORDERED
13 PRODUCED BY JUDGE BRECKENRIDGE RATHER THAN PRODUCING THEM.
14 HER DECLARATION IS PART OF THE ORIGINAL MOVING PAPERS TO BE
15 FILED WITH THIS COURT. SECOND, THE DOCUMENTS THEMSELVES
16 WERE NOT ONLY NOT SUBJECT TO ANY PRIVILEGE BUT WERE GIVEN TO
17 MR. ARMSTRONG FOR PURPOSES OF WRITING A BOOK. THEY WERE
18 GIVEN AWAY. SO IT WASN'T SOMETHING AS COUNSEL HAS --

19 THE COURT: I'M AGREEING WITH YOU. I DO NOT SEE THE
20 BASIS FOR A PRIVILEGE, BUT THE BURDEN IS ON YOU TO SHOW THAT
21 THESE FALL WITHIN SOME LEGITIMATE DISCOVERY REQUEST OF
22 YOURS. AND IF YOU DO THAT, IN OTHER WORDS, IF YOU MAKE A
23 REQUEST TO WHICH THESE DOCUMENTS ARE RESPONSIVE, THEN THEY
24 WILL IDENTIFY THOSE DOCUMENTS. AND ULTIMATELY IF YOU
25 BELIEVE THEY ARE NOT BEING CANDID ABOUT IT, YOU CAN FILE A
26 MOTION AND SAY, "HERE'S OUR REQUEST. THEY SAID NONE OF
27 THESE DOCUMENTS ARE RELEVANT." AND THEN I'LL REVIEW IT AND
28 FIND OUT. BECAUSE THAT'S WHAT WOULD HAPPEN IF THIS HAD

1 NEYER BEEN SEALED. IF THESE DOCUMENTS HAD NEVER BEEN SEALED
2 HERE, THEN YOU WOULD BE SUBJECT TO THE DEFENDANTS'
3 CANDIDNESS IN MAKING RESPONSES.

4 MR. MORANTZ: IT'S NOT QUITE CORRECT, YOUR HONOR.
5 WHAT HAS HAPPENED WAS THAT BUT FOR THE SETTLEMENT THAT WAS
6 PLACED ON THIS CASE, ARMSTRONG WOULD HAVE THE DOCUMENTS
7 INDEPENDENT -- WHAT THEY DID IS IN THE SETTLEMENT -- PART OF
8 THE SETTLEMENT THEY MADE WAS THAT MR. ARMSTRONG HAS
9 CONTRACTED AWAY -- HE WILL NOT TALK TO US. THAT WAS PART OF
10 THE CONTRACT SCIENTOLOGY PLACED ON MR. ARMSTRONG. THAT'S A
11 MATTER THAT WE'LL BE DEALING WITH IN THE OTHER LITIGATION.
12 BUT THE FACT REMAINS THAT WE CAN'T MAKE A REQUEST AND ARGUE
13 WITHOUT SEEING THE DOCUMENTS. WHAT I WOULD SUGGEST AS A
14 BETTER ALTERNATIVE TO THE COURT IS THAT WE BE ABLE TO VIEW
15 THE DOCUMENTS BUT NOT COPY THE SAME, THAT WE WOULD THEN MAKE
16 MOTIONS TO THE COURT IN WHICH THE ACTION IS PENDING FOR THE
17 COURT TO DETERMINE IF THOSE DOCUMENTS ARE RELEVANT, AND THEN
18 IF WE BRING BACK AN ORDER --

19 THE COURT: I'M NOT GOING TO DO IT THAT WAY. HERE'S
20 THE ORDER: THE COURT'S ORDER OF NOVEMBER 9TH, 1988 IS
21 CLARIFIED AS FOLLOWS: IT DOES NOT RELATE TO NOR REQUIRE THE
22 UNSEALING OF EXHIBIT 500-CCCCC, OR 500-5 C'S, THE TWO TAPES,
23 AUDIO TAPES, NOR TO EXHIBITS -- THE COPY IS SO BAD HERE I'M
24 LOOKING AT THE -- I GUESS YOU PUT THEM IN YOUR MOVING
25 PAPERS. HERE IT IS. -- NOR TO DOCUMENTS EXHIBITS 500-5K,
26 500-5L, 500-5O, 500-5P, AND 500-6O. WITH REGARD TO THE LAST
27 FIVE DESIGNATED DOCUMENTS, THIS ORDER IS WITHOUT PREJUDICE
28 TO A FURTHER MOTION SPECIFICALLY DIRECTED TO THESE DOCUMENTS

1 IN CONNECTION WITH DISCOVERY IN THE OTHER CASE.

2 MR. MORANTZ: YOUR HONOR, IF I MAY, THERE'S ANOTHER
3 PROBLEM I WISH TO ADDRESS THE COURT ON, IF I MAY. IF THE
4 COURT MAKES AN ORDER AS SUCH, IT WOULD -- IN MY CASES WITH
5 MR. CORYDON IT WOULD BE A FUTILE EFFORT. I COULD NOT SEND
6 SUCH A DISCOVERY REQUEST. THE PLAINTIFFS ARE
7 SCIENTOLOGISTS, NOT THE CHURCH OF SCIENTOLOGY. SO I COULD
8 NOT ADDRESS -- THEY WOULD BE ABLE TO ANSWER THAT SUCH
9 DOCUMENTS -- THE CHURCH OF SCIENTOLOGY MIGHT SAY --

10 THE COURT: THAT'S NOT CORRECT. YOU CAN DO DISCOVERY
11 FROM A NONPARTY.

12 MR. MORANTZ: YOU MEAN SERVE A SUBPOENA ON THE CHURCH
13 OF SCIENTOLOGY THAT SAID THESE DOCUMENTS IN THIS COURT
14 FILE -- THEY WOULDN'T BE OBLIGATED TO PRODUCE THEM. I
15 COULDN'T SERVE A SET OF INTERROGATORIES ASKING THEM TO
16 IDENTIFY SUCH DOCUMENTS, AND I COULDN'T SERVE ANYTHING ON
17 THEM TO PRODUCE THEM.

18 THE COURT: YOU CAN DO A DEPOSITION, WRITTEN
19 DEPOSITION QUESTIONS TO A NONPARTY.

20 MR. MORANTZ: HOW WOULD I DESIGNATE WHICH PARTY WOULD
21 HAVE KNOWLEDGE OF WHAT THE CONTENTS ARE OF THESE PARTICULAR
22 DOCUMENTS?

23 THE COURT: YOU'RE NOT UNDERSTANDING. I'M NOT
24 SUGGESTING THAT YOU CAN ASK THEM WHAT IS IN THOSE DOCUMENTS.
25 THAT'S NOT NECESSARILY RELEVANT. THAT DOESN'T SHOW
26 RELEVANCE TO YOUR OTHER CASE. YOU CAN GIVE THEM DISCOVERY
27 ON THE SUBJECTS OF YOUR LAWSUIT. AND I'M SAYING RIGHT NOW
28 THAT THEY ARE REQUIRED IN ANSWERING ALL OF YOUR DISCOVERY TO

1 INDICATE WHETHER OR NOT ANY OF THESE FIVE DOCUMENTS ARE
2 RESPONSIVE TO YOUR DISCOVERY REQUEST. AND IF THEY SO
3 INDICATE THAT THESE DOCUMENTS OR ONE OR TWO OF THEM OR
4 WHATEVER ARE RESPONSIVE, THEN YOU WILL BE ABLE TO MAKE A
5 DISCRETE MOTION WITH REGARD TO THOSE DOCUMENTS. IF THEY
6 INDICATE THAT, NO, NONE OF THESE DOCUMENTS ARE RESPONSIVE TO
7 ANY OF YOUR DISCOVERY, THEN YOU MAY MAKE A MOTION, IF YOU
8 ARE SO INCLINED, TO HAVE THE COURT REVIEW THOSE DOCUMENTS TO
9 DETERMINE WHETHER OR NOT THEY HAVE TRUTHFULLY RESPONDED TO
10 YOUR DISCOVERY.

11 MR. MORANTZ: WHAT I WOULD ASK IS IF I COULD MAKE AN
12 OFFER OF PROOF AS TO THE RELEVANCE OF THE WRITTEN
13 DOCUMENTS --

14 THE COURT: WE'RE ALL THROUGH WITH THE HEARING,
15 COUNSEL. THAT'S THE PROCEDURE WE'RE GOING TO DO.

16 MS. PLEVIN: THERE IS ANOTHER ADDITIONAL ISSUE I
17 THINK WOULD BE USEFUL TO CLARIFY AT THIS POINT, AND THAT IS
18 THE PROCEDURE FOR UNSEALING THE FILES. WE'VE GOT A
19 SITUATION WHERE THERE ARE CERTAIN DOCUMENTS WHICH YOU'VE
20 INDICATED WHICH WILL NOT BE UNSEALED AT THE TIME. WE ALSO
21 HAVE A BACKGROUND HERE WHICH IS REFLECTED IN MS. ASNARAN'S
22 DECLARATION OF IMPROPER DEALING WITH DOCUMENTARY EVIDENCE BY
23 THE CHURCH OF SCIENTOLOGY.

24 THE COURT: WHAT DO YOU PROPOSE?

25 MS. PLEVIN: I PROPOSE THAT THE FILE BE UNSEALED IN
26 CHAMBERS UNDER YOUR SUPERVISION WITH A --

27 THE COURT: I DON'T HAVE TIME TO DO THAT. I'M SORRY.
28 I'M NOT GOING TO BE A POLICE OFFICER HERE.

1 MS. PLEVIN: I'M LOOKING FOR SOME WAY TO FIND A
2 PROCEDURE BY WHICH MR. MORANTZ AND MYSELF CAN VIEW THE FILE
3 EXCEPT FOR THE DOCUMENTS WHICH YOU CHOOSE --

4 THE COURT: WHAT YOU ARE SAYING IS YOU WANT IT
5 TOTALLY UNSEALED JUST FOR YOU.

6 MS. PLEVIN: NOT TRUE. I'M SAYING WE WOULD LIKE TO
7 HAVE ACCESS TO THEM BEFORE THEY ARE OPENED DOWN AT THE
8 CLERK'S WINDOW WHERE PEOPLE CAN GET ACCESS TO THEM AND PULL
9 THINGS OUT AND, UNFORTUNATELY, WE ARE CONCERNED, DESTROY
10 THEM.

11 THE COURT: ISN'T THERE A WAY THAT A CLERK CAN BE
12 ASSIGNED TO OVERSEE THE INSPECTION OF THE FILE?

13 MR. MOXON: I BELIEVE THIS MAY ALL BE MOOT NOW SINCE
14 THERE IS AN APPEAL IN THIS MATTER. IF THE COURT OF APPEALS
15 AFFIRMS HIS HONOR'S DECISION, THEN WE CAN COME BACK AND WORK
16 OUT A PROCEDURE.

17 THE COURT: I DON'T WANT YOU BACK. I DON'T HAVE TIME
18 TO HAVE YOU BACK ON THIS.

19 MR. MORANTZ: WE'RE ASSUMING -- IF THEY DON'T HAVE A
20 STAY -- I THINK IT COULD BE CONTINUED TO DECEMBER 27.
21 ASSUMING THAT NO STAY IS ISSUED BY THE APPELLATE COURT --

22 MS. PLEVIN: THEY HAVE NOT CHALLENGED THE GENERAL
23 UNSEALING ORDER, SO I DO NOT THINK THEY HAVE GROUNDS --

24 MR. MOXON: THAT'S NOT CORRECT.

25 MR. LIEBERMAN: OF COURSE WE'RE TAKING AN APPEAL ON
26 THAT.

27 THE COURT: IF IT ISN'T, THEN, OBVIOUSLY, IT'S OFF,
28 BUT I THINK WHAT I'M GOING TO DO IS ASK YOU TO SUBMIT AN

1 ORDER IMPLEMENTING MY NOVEMBER 9TH ORDER AND SET FORTH THE
2 PROCEDURE WHICH WOULD CALL FOR THE FILE TO BE UNSEALED BUT
3 SEQUESTERED SO THAT ANY TIME THE FILE IS BEING INSPECTED
4 THERE WILL BE A MEMBER OF THE CLERK'S OFFICE IN ATTENDANCE
5 WITH WHOEVER IS INSPECTING IT.

6 MS. PLEVIN: THAT SOUNDS FINE.

7 THE COURT: YOU CAN SUBMIT THE ORDER AND WORK THAT
8 OUT IN AN AGREEABLE WAY. OTHERWISE, YOU EACH SUBMIT YOUR
9 OWN IDEAS.

10 MR. MOXON: YOUR HONOR, IF THEY COULD SUBMIT THE
11 ORDER TO US, BEFORE IT COMES IN, FOR OUR APPROVAL.

12 THE COURT: YES.

13 (PROCEEDINGS CONCLUDED.)
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 56

HON. BRUCE R. GEERNAERT, JUDGE

CHURCH OF SCIENTOLOGY OF CALIFORNIA,

PLAINTIFF,

VS.

GERALD ARMSTRONG,

DEFENDANT.

NO. C 420 153

REPORTER'S
CERTIFICATE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

)

) SS

)

I, MICHAEL W. PETTIT, OFFICIAL REPORTER OF THE
SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF
LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES,
1 THROUGH 15, COMPRISE A FULL, TRUE AND CORRECT
TRANSCRIPT OF THE PROCEEDINGS HELD IN THE ABOVE MATTER AS
REPORTED BY ME ON NOVEMBER 30, 1988.

DATED THIS 2ND DAY OF DECEMBER, 1988.


MICHAEL W. PETTIT, CSR #2053

EXHIBIT L

DATE 11/30/88

HONORABLE BRUCE R. GEERNAERT

JUDGE

M. FITZGERALD

DEPUTY CLERK _____

HONORABLE

JUDGE PRO TEM

M. MEDARIS, CT. ASSIST

Deputy Sheriff

M. PETTIT

Reporter

(Parties and counsel checked if present)

9:00 am C420153

Church of Scientology of Calif.
vs.

Gerald Armstrong,

Counsel for
Plaintiff

BOWLES & MOXON

BY; TIMOTHY BOWLES ✓

Counsel for
Defendant

RABINOWITZ, BOUDIN, ETC.

BY; ERIC LIEBERMAN ✓

SAYRE, MORENO, PURCELL, ETC.

BY; TOBY L. PLEVIN ✓

PAUL MORANTZ ✓

NATURE OF PROCEEDINGS.

PLAINTIFF/INTERVENOR'S AND CROSS/DEFENDANT'S
MOTION FOR CLARIFICATION AND/OR RECONSIDERATION
TO PRESERVE SEAL ON ONE DOCUMENT PREVIOUSLY HELD
EXCLUDED FROM EVIDENCE AND HELD TO BE PROTECTED
BY ATTORNEY/CLIENT PRIVILEGE, AND FIVE ADDITIONAL
DOCUMENTS PREVIOUSLY EXCLUDED FROM EVIDENCE AND
MAINTAINED UNDER SEAL,

The Court's order of November 9, 1988 is clarified
as follows:

It does not relate nor require the unsealing of
Exhibits 500-CCCC or 500-SCS (the two audio tapes)
nor to Exhibits 500-5K, 500-5L, 500-5O, 500-5P, and
500-6O.

With regard to the last five designated documents
this order is without prejudice to a further motion
specifically directed to these documents in connection
with discovery in the other case.

Moving Party to submit proposed order which would
call for file to be unsealed and sequestered.

EXHIBIT M

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION

Civ. No. B 038975
(Super. Crt. No. C420153)

CHURCH OF SCIENTOLOGY OF CALIFORNIA
and MARY SUE HUBBARD

Appellants,

-against-

GERALD ARMSTRONG,

Defendant.

BENT CORYDON,

Respondent.

Appeal from Superior Court of California
County of Los Angeles
Judge Bruce R. Geernaert

MOTION TO DISMISS

CROSS APPEAL

TOBY L. PLEVIN
ATTORNEY AT LAW
6380 Wilshire Blvd, Suite 1600
Los Angeles, Ca. 90048
(213) 655-3183

Counsel for Respondent

Now comes Cross-Appellant Bent Corydon and moves the Court to dismiss the within Cross-Appeal.

Date: November 7, 1996



Toby L. Plevin, Attorney for
Cross-Appellant

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF

I have read the foregoing _____ and know its contents.

☒ CHECK APPLICABLE PARAGRAPH

☐ I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am ☐ an Officer ☐ a partner _____ of _____

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. ☐ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. ☐ The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am one of the attorneys for _____ a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on _____, 19____, at _____, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Type or Print Name

Signature

PROOF OF SERVICE

1013A (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of Los Angeles, State of California.

I am over the age of 18 and not a party to the within action; my business address is: 10700 SIA MONICA BLVD #4-300

On Nov 7, 1990, I served the foregoing document described as _____

Motion for Dismissal of Complaint

on _____ in this action

☐ by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list;
☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows:

KENNEDIE MCKIN
BOWLER & MCKIN
6255 Sunset Boulevard
Inglewood, Ca 90304

SUPERIOR COURT
DEPT 5C
11 N. Hill St.
Los Angeles, Ca 90012

ERIC LISBERMAN
BUSINESS COUNSEL
et al
Two Broadway
New York, New York 10004

☒ BY MAIL

☐ *I deposited such envelope in the mail at _____, California.
The envelope was mailed with postage thereon fully prepaid.

☐ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at _____ California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on Nov 7, 1990, at Los Angeles, California.

**BY PERSONAL SERVICE: I delivered such envelope by hand to the offices of the addressee.

Executed on _____, 19____, at _____, California.

☒ State: I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ Federal: I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Hollywood, California 90028.

On April 29, 1991, I caused to be served the foregoing document described as PETITION FOR WRIT OF SUPERSEDEAS OR OTHER APPROPRIATE STAY ORDER; MEMORANDUM OF LAW; STAY REQUESTED on interested parties in this action as below:

Gerald Armstrong
P.O. Box 751
San Anselmo, CA 94960

Toby L. Plevin **HAND SERVED**
Attorney at Law
10700 Santa Monica Blvd.
Suite 4300
Westwood, CA 90025

If hand service is indicated, I caused the above-referenced paper to be served by hand, otherwise I caused such envelopes with postage thereon fully prepaid to be placed in the United States mail at Hollywood, California.

Executed on April 29, 1991, at Hollywood, California.

A handwritten signature in black ink, appearing to be 'Toby L. Plevin', is written over a horizontal line. The signature is stylized with a large 'B' and a long horizontal stroke extending to the right.